NO. 93-926

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IN THE

Supreme Court of the United States

October Term, 1993

JAMES J. LEDWITH, JR., M.D.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE QUESTIONS FOR REVIEW

1. Whether the applicable statute, 42 U.S.C.§ 2541 et seq. (App. 69 et seq.)[1] , and the confirmed past practices of the Federal Agency, Health and Human Services, required that Dr. Ledwith be given an assignment to a site specific service location prior to placing him in default for the failure to perform the contractual obligations of his National Health Service Corps Scholarship Agreement, and, whether the Agency did so in this case.

Petitioner contends that the Agency had such an obligation which it did not fulfill in this case.

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[1] Refers to page 69 et seq. of the Appendix filed contemporaneously herewith.

2. Whether the failure of the Agency to comply with its established past practice in the assignment of Doctors to specific service locations prior to a notice of default and the failure of the Agency to consider his repeated requests for a hardship waiver denied Petitioner the due process and equal protection of the law guaranteed by the Fifth and Amendment to the Constitution of the United States.

Petitioner contends that he was denied the Protection of those Rights.

3. Whether Dr. Ledwith is entitled to a promissory estoppel vis a vis the Agency for its grossly unjust refusal to honor the contract which it made with him.

Petitioner Contends that He is.

4. Whether the present case was appropriate for summary judgment prior to the time that discovery had been completed.

Petitioner Contends that it Was Not.

PARTIES

All parties to this proceeding are listed in the caption of the case.

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I. STATEMENT OF THE GROUNDS INVOKING THE JURISDICTION OF THIS COURT.

Judgment in this case was entered by the United States Court of Appeals for the Fourth Circuit on July 14, 1993.

Appellant's petition for rehearing and a suggestion for rehearing in banc was denied on August 10, 1993.

This Court has jurisdiction to hear and consider this Petition for a Writ of Certiorari by reason of 28 U.S.C. § 1254.

The statutory provisions applicable to this case are 42 U.S.C. § 254e, 254*l*, 254m and 254o.

The applicable provision of the Constitution of the United States is Amendment 5.

II. STATEMENT OF THE CASE

This case was commenced by the United States in the United States District Court for the Eastern District of Virginia, Richmond Division, on June 19, 1992. Jurisdiction was predicated upon 28 U.S.C. § 1345. Defendant,(Petitioner herein) Dr. James J. Ledwith, Jr., answered on July 20, 1992.

On September 29, 1992, Dr. Ledwith filed and served his Motion to compel responses to his request for certain documents.

By an order entered on October 2 the court granted the United States leave to late-file its Motion for Summary Judgment.

On October 9, 1992, Dr. Ledwith filed and served a Motion to permit the late filing of his Motion for Summary Judgment

and also filed his proposed Motion for Summary Judgment.

All motions for summary judgment were heard by the district court on October 20, 1992. Dr. Ledwith's motion to compel discovery responses was held in abeyance pending a decision on the summary judgment motions.

On November 5, 1992 the court entered its order denying Dr. Ledwith's motion for summary judgment and granting that of the United States. (App. 1) Judgment was entered on the same date. Defendant's Motion to compel the production of documents was not decided.

A notice of Appeal was filed by Dr. Ledwith with the district court on December 17, 1992. On May 5, 1993 briefs were filed with and argument subsequently was had before The United States Court of

Appeals for the Fourth Judicial Circuit, Judges Russell, Hamilton and Heaney[2]. On July 14, 1993 the judgment of the district court was affirmed by the Court of Appeals, per curiam. (App. 21-54)

On July 28, 1993, Dr. Ledwith timely filed a petition for rehearing and a suggestion of rehearing in banc. That petition was denied on August 10, 1993. (App. 55-56)

III. STATEMENT OF THE FACTS

In 1976 in an attempt to attract physicians possessing certain specialized career interests[3] to make a long term commitment to practicing in geographical areas to which, because of existing social

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[2] Judge Heaney of the Eighth Judicial Circuit sat by designation.

[3] One of those is "Family Practice" medicine which is Dr. Ledwith's Board certified specialty.

and economic conditions, they might not otherwise be attracted, Congress enacted the National Health Service Corps ("NHSC") Scholarship Program. 42 U.S.C. §254*l*. et. seq. (as amended). (App. 69-88) In return for scholarship aid provided to them by the NHSC while attending medical school the physician-scholars must sign a contract to serve at NHSC designated locations one year for every year of financial aid which they receive, a minimum of two years. If for any reason the scholars fail to comply they are assessed a "liquidated damage" fee equal to the amount of the outstanding aid, interest at the highest prevailing rate, **all trebled, plus a penalty**.[4]

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[4] As the trial court noted, (App. 2, 17) the original scholarship amount of $20,758 provided to Dr. Ledwith has ballooned into a claim of $187,958.31.

Dr. Ledwith attended medical school at the Medical College of Virginia (MCV) in Richmond, Virginia during the years 1979-1983 immediately after the completion of his undergraduate education at the College of William and Mary. He applied for a NHSC[5] scholarship ("Scholarship") during the spring semester of his first year, after first having purposefully and thoroughly discussed the merits of the program with NHSC recruiters both on and off campus. Beth Faber, whom he dated while at the College of William and Mary and who he married in July of 1980 became a very large consideration in his after medical-school plans, including his decision to apply for a NHSC scholarship.

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[5] The National Health Service Corps is an arm of Health and Human Service ("HHS"), formerly Health, Education and Welfare ("HEW").

She had enrolled in dental school at MCV at the same time he entered medical school and, accordingly, they both recognized that they would have to plan their future around two professional careers.

At the time that Dr. Ledwith applied for his NHSC scholarship, assurances were given by the NHSC "sponsored" individuals (agents or representatives) to whom he spoke that when it came time for him to fulfill his commitment his wife's career and the practical geographic limitations placed upon her by the dental licensure process would be given consideration in the site assignment procedure. (App. 121-122.) He was further assured by them that he would not be involuntarily placed into programs such as the Indian Health Service ("IHS") whose primary service locations were in an area of the country which was

not expected to be compatible with their long range plans. (App.121-122, 133.)[6]

Upon graduation from medical school, Dr. Ledwith undertook a three year Family Practice residency. In accordance with the NHSC policy and congressional mandate, his service obligation to the NHSC was thereby deferred during that period.

In the final year of his residency, Dr. Ledwith participated in phase one of the NHSC site placement process, trying to secure a position that would fulfill his two year obligation which was then set to begin on July 1, 1986. During this phase Dr. Ledwith, in competition with other doctors who were to be entering the

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[6] Contrary to the finding of the district court (App. 16.) the Defendant asserts and the record establishes (App. 121-122.) that there was concealed from him the fact that he may have had to serve in the IHS.

service at the same time, was expected to contact eligible facilities included on a nation-wide list which was supplied to him by the NHSC[7]. Because of Dr. Ledwith's concern that his wife have an opportunity to pursue her career in orthodontics and not lose the skills she had spent seven years acquiring, and in accordance with assurances which he had been given at the time of his recruitment, Dr. Ledwith indicated on his Site Selection Questionnaire an eagerness to work in areas in which his wife would be licensed. These were in the East, where competition for NHSC positions was most intense. He

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[7] This procedure was designed to allow the facility and the doctor to make a mutually acceptable "pairing" which, hopefully, would result in the doctor remaining in the area after the completion of his or her required service.

did not "make a match" during phase one of the placement cycle.

In December of 1985, Dr. Ledwith received a letter (App. 179-182.) from the Director of the NHSC informing him that because he had not made a match during the first phase he had been allocated to the IHS,[8] i.e., that he had now entered phase two of the three phase program. During phase two, he was again expected to attempt to make a match with a facility which had a remaining opening. The difference between this and phase one was that now the number of available positions was smaller and his search was limited to the IHS.

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[8] Without belaboring the point, suffice it to say that Dr. Ledwith was both shocked and dismayed to find that during phase 2 he was "allocated" to a service to which he had earlier been told that he would not be involuntarily assigned.

Following a diligent effort of telephone calls and letters involving Dr. Ledwith with various officials in the NHSC and IHS, Dr. Ledwith was able to ascertain that there would be no opportunities for he and his wife in the IHS. In a letter to the Director of the NHSC dated January 3, 1986, (App. 183-190.) he noted that he had reviewed the material sent to him by the IHS and could find no sites "which are suitable for me." He then proposed that as an alternative he be assigned to King William County, Virginia, which earlier had been on the NHSC's list of Health Manpower Shortage Areas.[9]

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[9] During his residency he had served a short preceptorship there, was accepted by the clinic's staff encouraged to join them and, most importantly, it was the type of small rural underserved community which attracted him to the NHSC in the first place, and in which he wanted to stay.

By the end of January, 1986, not having received any response from the NHSC, Dr. Ledwith again wrote to the NHSC Director, stating that he found it "absolutely impossible for me to accept the assignment to the Indian Health Service". (App. 191-194) In reply, Dr. Ledwith received a letter from the NHSC Director denying him a transfer from the IHS and directing him to work with an IHS official to secure a placement in the IHS by April 15. **He was specifically told in that letter that his failure to do this would result in his "being assigned to a specific site identified by the NHSC**." (App. 195-199.) In a subsequent letter dated February 13, 1986, the NHSC director suggested a Pine Ridge, South Dakota, site as a possibility for his wife and reiterated that if Dr. Ledwith did not

match a site by April 15, **he would be site assigned by the NHSC and that if he did not thereafter accept such assignment he would then be placed in default**. (App. 200-202.)

On March 13, 1986, Dr. Ledwith wrote the NHSC Director that circumstances would not permit him to accept an assignment from the IHS. "Our educational loan obligations makes it impossible to do otherwise." He again raised the question of a waiver of his service obligation and was again ignored just as he had been the first time. (App. 203-211.) A month later, on April 13, 1986, Dr. Ledwith wrote to the IHS that he did "not expect to be able to fulfill my scholarship commitment with the NHSC through a position in the IHS." (App. 212-214.) In a letter dated April 14, 1986, the NHSC

Director noted Dr. Ledwith's stated "unwillingness" to match to an IHS site and concludes his letter by stating: **"If you do not match to a site prior to April 15, you will be assigned to a specific site to fulfill your obligation."** (App. 215-221.)

In a letter dated April 28, 1986, the NHSC Director radically changed course, and stated that as a result of Dr. Ledwith's communication to the IHS on April 13, it was being recommended that he be immediately placed in default of his scholarship obligation effective July 1. In other words the NHSC had unilaterally and arbitrarily decided that, despite its earlier repeated promises to the contrary, it would shortcut the established process and refuse to assign Dr. Ledwith to a specific site. (App. 222-223.)

Dr. Ledwith was shocked by this letter. He had been told by members of the NHSC Director's staff and others that the final site assignment phase (i.e. phase three) would not be limited to any one program, state or region, but that all available sites would be considered. (App. 124-126.) Therefore, he had understood that he would be better off taking his chances under phase three, when the possibility existed that he could be assigned to an area where his wife could practice orthodontics, than by making an obvious mis-match with an IHS site during the second phase. In a letter to the NHSC Director dated May 23, 1986, Dr. Ledwith reminded him that "April 15 was established as a deadline by the NHSC as the end of only one phase of the placement process. Since that time, we were

supposed to enter a process of specific site assignment." (App. 224-237.)

On June 19, 1986, Dr. Ledwith wrote to the Acting Director of the Division of Health Service Scholarships explaining that contrary to the position now taken by the NHSC, he had never expressed an unwillingness to perform his obligation. Dr. Ledwith noted again that he had never been offered a site assignment. (App. 238-240.)

Neither the NHSC nor the IHS did anything to permit Dr. Ledwith to have an opportunity to participate in the third phase of the selection process. They stridently insisted that Dr. Ledwith was correctly placed in default as of July 1, 1986. Despite his repeated assertions that he had never been site assigned, and wanted to fulfill his service obligation,

no effort was ever made to give him a specific assignment.

IV. ARGUMENT

The present case has not only an importance to the individual but also, we believe, to the proper administration of justice and the laws of the United States. For this Court there is a question of first impression, namely whether those provisions of the operative statute which specifically mandate a written contract between the NHSC and the scholars, 42 U.S.C. §254*l* (b)(4), are superfluous. The decision in the present case is also in conflict with other jurisdictions which have not discarded the contract between the NHSC and scholars as meaningless. Rendleman v. Bowen, 860 F.2d 1537 (9th Cir. 1988); United States v. Hatcher, 922

F.2d 1402 (9th Cir. 1991); United States v. Citrin, 972 F.2d 1044 (9th Cir. 1992); United States v. Melendez, 944 F.2d 216 (5th Cir. 1991) Furthermore, the decision of the Fourth Circuit in this case is in direct conflict with an earlier decision of the Ninth Circuit in United States v. St. Thomas, 966 F.2d 476 (9th Cir. 1992) on the issue of whether a third phase assignment of Dr. Ledwith to a specific service location was necessary and whether the allocation to a service such as the IHS satisfies such an obligation.

This case is also important because it involves issues concerning a program of scholarship aid to be repaid by a period of Government service. It is, therefore, remarkably similar in its purpose to the program which the current Administration has announced it will legislate for

undergraduate studies. It is highly likely that the statute involved in this case will be viewed and/or used as a prototype for that program.

Finally, the acts of the government about which this Petitioner complains are so egregious that they provide an opportunity for this Court to clarify the circumstances under which an estoppel vis a vis the United States may be obtained.

A. DR.LEDWITH'S PURSUIT OF HIS CLAIM HAS BEEN FRUSTRATED BY THE LACK OF AN ADEQUATE RECORD.

Dr. Ledwith's pursuit of his vindication through the courts has been seriously frustrated by several circumstances. First, because the trial court granted summary judgment for the

government before discovery was completed there has been an inability to fully develop the record. Despite (or, perhaps because of) that the trial court as well as the court of appeals have both assumed material facts which are in serious dispute. Second there is the more insidious matter which while never openly discussed, was none the less present. Contrary to the patina placed upon it by the lower courts, this is not a case of a "deadbeat" doctor who refuses to honor his service commitments. The reality is quite different and an adequate record would have exposed the error.

Dr. Ledwith was attracted to the NHSC's scholarship program not because of the tuition money which it offered; he had other offers from programs which would have cost far less to repay than that

offered by the NHSC. Rather, he was attracted by the fact that the aims of the program were similar to his own long-range goals, namely to provide a medical service in a rural community where he could feel a sense of personal accomplishment. That he held and stills hold such an ideal is borne out by the fact that he and his orthodontist wife are serving today in a medically deprived area of rural Virginia where he must write off nearly 30% of his fees because of the indigence of his patients.

What this record should more adequately reflect is that Dr. Ledwith when considering the offer of the NHSC for a scholarship saw only one potential drawback. He was to marry a young woman who also had career aspirations and, because of their perception of the

difficulty which could be caused by their living in the West while she was trying to become licensed as an orthodontist, an eventual assignment to the Indian Health Service ("IHS") was unacceptable. They therefore sought and received assurances that Dr. Ledwith, at the conclusion of his training, would not be assigned to the IHS. Despite that, when he completed his residency, there was an attempt to allocate him to that service and, what followed, was a torturous trip to this Court. He is asking only for an opportunity to explain his side of the story.

B. THE GOVERNMENT ERRED IN PLACING DEFENDANT IN DEFAULT PRIOR TO FULFILLING ITS OBLIGATION TO ASSIGN HIM TO A SPECIFIC SITE

NHSC scholarship scholars prior to the receipt of any aid, sign a written contract promising to serve in a Health Manpower Shortage Area ("HMSA") after graduation from medical school. 42 USC §§ 254e, 254*l* (b)(4), 254*l* (f) (1) (B) (iv), 254 (m).[10] Although the NHSC has not passed a regulation describing the process by which students are assigned to particular HMSAs, it has developed "a formal three-phase placement procedure." United States v. Hatcher, 922 F.2d 1402, 1404 (9th Cir. 1991). Phase 1 consists of

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[10] Under the statue, an "area" is a small geographic area such as one part of a city; a population group; or a specific facility. 42 U.S.C. §254e (a) (1).

the scholars being provided a list of all available HMSA's then having available positions and the scholars thereafter contacting those in which they have an interest to try to make a "match". In Phase 2 the scholars are allocated to a service, eg the Indian Health Service or the Bureau of Prisons, or a region, i.e. a large geographical part of the country. The scholars then are required to apply to HMSA's in that region or service having open positions to try to make a match.

As was explained to Dr. Ledwith in recruitment materials prior to his signing an application for a NHSC grant, and subsequently when he was undergoing the placement process, the third and final phase of the process requires the NHSC to assign those scholars who were not placed during the first two phases to a specific

site. More importantly, during the third phase of the placement operation, assignments are to be drawn from nationwide locations, not simply those to which the scholar had been allocated during the second phase. That latter condition became a matter of crucial importance to this defendant who , during the recruitment process, had made it plain to the government that the Indian Health Service was not an acceptable option for him, had been told that he would not be assigned to it involuntarily and despite that, was allocated to it in phase two of the process. As Dr. Ledwith explained:

> "18. In July of 1985 I received the list from the NHSC of available opportunities (the so-called High Priority Opportunities List "HPOL") in HMSAs from which I was to make a selection of a particular site and see if I could "match" my requirements with the needs of one of the sites. The process was to be completed by October 31, 1985. I

understood that if I was unable to make a match by that date that I would be allocated to a region and that I would be required, by some certain date, to attempt to make a match in that region. Failing to make a match in the allocated region I would be specifically assigned to a site by the NHSC. Exhibit 1 and 6-10.

I further understood that the specific site assignment would be drawn from all then currently unmatched sites, i.e. not just the region to which I had been allocated.

. . .

I believed that since the assignment pool would be drawn from a wider range than simply the IHS, **Exhibit 19**, that I would be no worse off than I was at that time and that if the NHSC actually assigned me to an IHS site I would be then able to petition the Secretary of Health and Human Services for a review and, possibly, a "hardship" waiver."
(App. 129-130.)

It is important to note that the appellate court has not found and the government has never claimed that Dr. Ledwith was ever assigned to a specific site either within or without the IHS. The

trial court and, apparently, the court of appeals concluded that there was no necessity for the HHS to actually assign Dr. Ledwith to a specific site because according to them he had, during phase two, exhibited his refusal to serve in the IHS. At most, therefore, Dr. Ledwith was "allocated" to a service. Accordingly, the court's decision which permits the Agency to default a doctor before a specific site assignment is made is in direct conflict with the Statute and with the Ninth Circuit's decision in United States v. St. Thomas, 966 F.2d 476 (9th Cir. 1992)

In United States v. St. Thomas, supra, the Ninth Circuit used a strict test to decide whether the scholar in that case had been "assigned" in terms of the statute and, therefore, properly placed into default. It noted that under the

statute, the Secretary "shall assign" participants to "health professional shortage areas." 42 USC §§254m (d), 254e (a) (1).

In St. Thomas the NHSC scholar was allocated to a position at the Federal Bureau of Prisons to fulfill his service obligation. Because of budget cuts, the position became unavailable and he was informed that he had been reallocated either to the NHSC or to the IHS. He was subsequently notified that he had been assigned to Region IX of the NHSC and should begin the process of identifying a position in which to fulfill his service obligation. He was advised that if he did not match to a site by May 4, 1982, he would be assigned to a site. Dr. St. Thomas was not matched to a site by the specified date, nor was any assignment

made. The regional office sent him an application for a Private Placement Option (PPO) after he informed it he had been offered a position in a clinic. He did not return the PPO application and was subsequently deemed to be in default. In discussing this case, the Court wrote:

> "Section 254 m (d) requires the Secretary to assign participants to a health manpower shortage area for service obligations under the National Health Service Corps scholarships. The Secretary never assigned St. Thomas to a health manpower shortage area. Even if it might otherwise have sufficed, the assignment to the Bureau of Prisons did not satisfy the statutory duty because it was revoked. Nor did the Secretary ever assign St. Thomas to the Indian Health Service; the December 28 letter stated that it and the NHSC were alternatives. Finally, the assignment of St. Thomas to the National Health Service Corps, Region IX, did not satisfy the assignment requirement. An "area" is a small geographic area such as one part of a city; a population group; or a specific facility. 42 USC Section 254e (a) (1). The three-state Region IX did not qualify. The United States does not argue that any of

> these assignments sufficed. St. Thomas did not match to a site and obviate the need for the Secretary's assigning him to a health manpower shortage area."

966 F.2d at 483-84. (Emphasis Supplied)

As, the excerpts included above make clear, St. Thomas holds that an assignment must be made and a broad "assignment" to a service such as the IHS is insufficient to satisfy the statutory requirement. The Court in St. Thomas is obviously tying the HMSA assignment requirement to the statutory definition of "area" under 42 U.S.C. §254e (a) (1). Neither the Bureau of Prisons nor the Indian Health Service can be deemed an "area" within this definition.

The Fourth Circuit's decision in this case is diametrically opposed to St. Thomas. Here the court has held that

there are or may be circumstances in which the NHSC does not have to assign a scholar to a site before it may place him into default. Not only does that decision not square with the Statute and with St. Thomas, this case offers a perfect example of the injustice which such a decision may provoke.

Presumably the trial Court and the Fourth Circuit justified their decision on the basis of a finding of fact made by them first, that Dr. Ledwith by signifying to the Agency an unwillingness to serve in the IHS was repudiating his obligations to serve because the Agency could have assigned him to a specific site in the IHS and second, that Dr. Ledwith might have also refused an assignment to the IHS if it had been made. But that is sheer conjecture. It certainly cannot be said

unequivocally that if the government had done such that its actions would have been reasonable or even that Dr. Ledwith's reactions were predictable. Furthermore, once it is understood that Dr. Ledwith had been led by the NHSC personnel to understand that the "assignment pool" of facilities available in phase three of the process is not limited to the service to which one was "allocated" in phase two (eg. the IHS) it becomes apparent that the system itself, as he was led to perceive it encourages scholars to wait for a "final assignment" in phase three rather than making an incompatible pairing in phase two. Therefore, Dr. Ledwith was more than justified in expressing his reluctance to accept his phase two allocation to the IHS. It certainly would be an unwarranted assumption that a

rejection of a phase two allocation was a repudiation of Dr. Ledwith's service obligation.

In sum, Dr. Ledwith was entitled to something which to this day he has not been provided. He was entitled to have the NHSC examine the nationwide list of available positions remaining after phases one and two had been completed and, thereafter, reasonably assign him to one of those, using as a part of the decision process the criteria which he was told they would use. If the NHSC had demonstrated to Dr. Ledwith that they had done so, Dr. Ledwith would have gladly performed his service and we would not be before this Court today.

When Dr. Ledwith insisted he could not be held in default because he had never been specifically assigned to a

site, he was well within his rights under the statute. Like Dr. St. Thomas, Dr. Ledwith never rejected an assignment. His statements to the NHSC and the IHS were carefully worded pleas for help; that the government honor its bargain and not force him to serve in the IHS. Given his understanding of how the NHSC placement process worked, he felt he could be candid in his views as to what type of placement might ultimately be most beneficial to him and to the NHSC, without being punished for his statements, thrown into default, and denied an opportunity to fulfill his service obligation.

The Ninth Circuit in St. Thomas, supra, held the HHS to a high standard of compliance with its statutory obligations:

> "The Secretary administers a statute with specific provisions with a suggestion of

> almost military precision in the concept of "a corps." The penalty for a physician in breach of the obligated service requirement is a heavy one, far exceeding the actual monetary loss to the United States. **The United States expects its beneficiaries to turn square corners in dealing with it. Similarly, the United States is required to turn square corners in dealing with its beneficiaries**. The Secretary failed to take the steps necessary to put St. Thomas into default." (Emphasis Supplied)

966 F.2d at 486.

We believe that it was correct in doing so.

C. DEFENDANT HAS BEEN DENIED DUE PROCESS OF LAW.

The law relevant to Dr. Ledwith's Scholarship provides:

> "The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary." 42 U.S.C.A. §254o (c)(3).

> "The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable."
> 42 U.S.C.A. § 254o (d)(2)

The contract which the Agency required Dr. Ledwith to sign stated:

> "The Secretary may waive or suspend the applicant's service or payment obligation under this contract if:
>
> a. compliance by the applicant with the terms and conditions of this contract is impossible or would involve extreme hardship, and
> b. enforcement of such obligation would be unconscionable."

(App. 172-174)

On two separate occasions Dr. Ledwith asked the NHSC to review his case for consideration of a "hardship" waiver, (App. 183-190, 200-202.) and on both occasions his requests were ignored. We are thus not confronted by an instance where a scholar made a request for a waiver and, after consideration, the agency decided that insufficient hardship had been shown to justify such. No, this is an instance in which the Secretary or his designee never ostensibly provided any consideration. An agency of the federal government cannot ignore its enabling statute and its own regulations when the interest of an individual is thereby affected. It offends every notion of fair play. Vitarelli v. Seaton, 359 U.S. 535 (1959); Service v. Dulles, 354 U.S. 363

(1957); United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); Columbia Broadcasting System, Inc., 316 U.S. (1942) 407; Montilla v. I.N.S., 926 F.2d 162 (2nd Cir. 1991).

In addition, as Defendant established earlier in this memorandum, the time-honored and established method that the Agency used in its assignment of scholars to service locations was done in three phases, the last phase being the assignment to a specific site drawn from a wider range of areas than was offered in phase two. In Dr. Ledwith's case, he was waiting for such an assignment with the hope that he might be matched to a more compatible site. For no explainable reason, however, the Agency after repeatedly threatening that it would so assign him, omitted the third and final

phase and put him into "default". The failure of an administrative agency of the federal government to follow its own established procedures resulting in harm to the individual is also a denial of the due process of law. Cox v. Louisiana, 379 U.S. 559 (1965); Yellin v. United States, 374 U.S. 109 (1963); Roly v. Ohio, 360 U.S. 423 (1959); Bridges v. Wixon, 326 U.S. 135 (1945); King v. Finch, 428 F.2d 709 (5th Cir. 1970); Berends v. Butz, 357 F. Supp. 143 (D. Minn. 1973). See, United States v. Caceres, 440 U.S. 741, 757 (1979) (dissent). See also, Bills v. Henderson, 631 F.2d 1287 (6th Cir. 1980). Cf. Arizona Grocery Co. v. Atchison T. & S.F.R.Co., 284 U.S. 370 (1932).

D. DEFENDANT IS ENTITLED TO AN OPPORTUNITY TO PROVE AN EQUITABLE ESTOPPEL VIS A VIS THE GOVERNMENT.

The record below establishes that, like a number of other doctor-scholars, Dr. Ledwith was told at least four things by representatives of the NHSC:

1. That there would be no involuntary assignment to the IHS;
2. That a spouse's professional needs would be taken into consideration when determining assignments for doctor-scholars;
3. That placement in the service would be a three phase process, the last phase being the assignment to a specific service facility;

4. That the list of facilities included in the third, i.e. force-match phase, would be drawn from all currently available sites;

The Agency clearly had the authority necessary to enable it to include those things in its offer to the medical scholars. 42 U.S.C.A. 254*l* (f)(4).[11] It is also evident that if those representations were untrue and, as the Government now contends, they were not intended to be a part of the agreement made between Dr. Ledwith and the parties, then Dr. Ledwith

---

[11] Accordingly, this is not a case where "officers or agents enter[ed] into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917). Neither is it a case involving public funds. OPM v. Richmond, 496 U.S. 414 (1990); Schweiker v. Hansen, 450 U.S. 785 (1981).

and countless others relied on them to their immense detriment. The Agency must, therefore, now be estopped to deny the inclusion of such terms in the agreement which Dr. Ledwith made with it. United States v. Pennsylvania Industrial Chemical Corp., 411 U.S. 655 (1973); Montana v. Kennedy, 366 U.S. 308 (1961); Moser v. United States, 341 U.S. 41 (1951). See, Keener v. Eastern Associated Coal Corp., 954 F.2d 209 (4th Cir. 1992); Bd. of Educ. of the City of N.Y., v. Harris, 622 F.2d 599 (2nd Cir. 1980) ("An estoppel in this circumstance would require a misrepresentation by an agent of the federal government made within the scope of his authority, which was justifiably relied upon by the appellee to its detriment thereby making the denial of equitable relief unconscionable . . ." at

n7 608); Beacom v. EEOC., 500 F.Supp. 428 (D. Ariz. 1980). Cf., Baldwin County Welcome Center v. Brown, 466 U.S. 147, 151 (1984).

Since the Petitioner has been denied the opportunity to discover and present evidence concerning the issue, the question is whether the likelihood exists that there may be sufficient evidence of the "affirmative misconduct" of the Government to support such a claim by Dr. Ledwith. Keener v. Medical Eastern Assoc. Coal Corp., 954 F.2d 209 (4th Cir. 1992). Actual malice is not the only criteria[12].

---

[12] In any event, the evidence which has already been presented of correspondence back and forth between the parties during phase two of the assignment process culminating in the abrupt departure of the NHSC from its admitted standard practice of making specific site assignments could reasonably and objectively be interpreted by a trier of fact as a malicious act on the part of the

(continued...)

See, OPM v. Richmond, 496 U.S. 414 (1990). If the Government is now correct that the features of the contract which were repeatedly explained to Dr. Ledwith by the NHSC representatives were not actually included, then quite clearly something more than "mere negligence" occurred. At the very least, Dr Ledwith should be given the opportunity to continue his discovery and, thereafter, present his facts to the court.

E. SUMMARY JUDGMENT SHOULD NOT HAVE GRANTED TO THE GOVERNMENT WHICH HAS FAILED TO REFUTE PETITIONER'S CONTENTION THAT THERE ARE GENUINE ISSUES OF UNRESOLVED MATERIAL FACT.

---

[12](...continued)
Agency personnel taken to "teach a lesson" to an insistent doctor who has dared to "make waves".

Summary judgment is only appropriate where there is no genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Ross v. Communications Satellite Corp., 759 F.2d 355 (4th Cir. 1985). The Fourth Circuit which reviewed the motions for summary judgment, de novo, found that the material facts were not in dispute. That judgment was in error.

Anderson v. Liberty Lobby, Inc., supra, explains that the question of the propriety of the imposition of a summary judgment must be examined on two planes; first is the substantive question of what is material to the proceeding and, second whether there are genuine issues concerning those substantive matters. In

the present case it is beyond question that the Petitioner raised numerous genuine issues about the provisions of the contract. Principally those concerned whether there was incorporated into the written agreement a verbal commitment that Dr. Ledwith would not be involuntarily assigned to the IHS and a provision that his wife's professional needs would be considered by the Agency when the time came for posting Dr. Ledwith to a service location. The Fourth Circuit refused to even consider those issues.

The Fourth Circuit also refused to consider the reasonableness of the NHSC's actions; i.e., whether they were or were not arbitrary. Here, however, the Circuit recognized the validity of the issue but decided, that "We believe the government has the stronger position." (App. 49.) The

appellate court's decision, therefore, violates at least two of this Court's mandates:

> "Instead, the plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment. This is true even where the evidence is likely to be within the possession of the defendant, as long as the plaintiff has had a full opportunity to conduct discovery. We repeat, however, that the plaintiff, to survive the defendant's motion, need only present evidence from which a jury might return a verdict in his favor. If he does so, there is a genuine issue of fact that requires a trial." Anderson, supra, at 257.

There are a large number of remaining genuine factual material issues among which the following are of sufficient dignity to command the attention of this court:

1. Whether there was a binding contract, and if so, what were the rights and obligations of the parties;

2. Whether the Agency's actions were "arbitrary and capricious".

1. Was There a Binding Contract And If So, What Did It Provide?

The Act mandates, 42 U.S.C. §2541 (b)(4), that those scholarship applicants accepted into the program must sign a contract with the HHS before receiving the aid. One of the more interesting issues which have been raised by this case is what governing effect, if any, does the contract have. This is an issue of first impression for this Court as it was for the Fourth Circuit.[13] Several of the other

[13] The Fourth Circuit characterizes this part of the argument as "Ledwith (continued...)

Circuits had dealt with somewhat similar issues prior to this case and, while the Fourth Circuit states that its decision is in keeping with the other Circuits, it seems clear that it is not.

In Rendleman v. Bowen, 860 F.2d 1537 (9th Cir. 1988); United States v. Hatcher, 922 F.2d 1402 (9th Cir. 1991); United States v. Citrin, 972 F.2d 1044 (9th Cir. 1992); United States v. Melendez, 944 F.2d 216 (5th Cir. 1991), the Courts were confronted with the question of what tools to use in construing the provisions of the standard written contract between the scholars and the government. Generally they decided that "Statutory intent,

---

[13](...continued)
initially argues that contract principles govern the interpretation of his argument with the NHSC." (App. 46.) Despite that, we offer nothing here which was not presented to that court.

therefore, is more relevant to the interpretation of the conditions than are common law contract principles." Rendleman v. Bowen, 860 F.2d 1537, 1541 (9th Cir. 1988) (Emphasis Supplied). That is, of course, not surprising where as here the enabling statute is remedial in nature and mandates, in many respects, the specific content of the agreement. But, those earlier cases certainly cannot be read to provide that the contracts negotiated between the NHSC and the scholars are meaningless. They recognized that Congress allowed the Agency a measure of administrative freedom to flesh out its agreements with the scholars. Congress, indeed, incorporated that flexibility into

the statute. 42 U.S.C. §254*l* (f)(4).[14] Despite that and contrary to the decisions of its sister circuits, the Fourth Circuit, by its decision in this present case has rendered the contract and the contract process totally superfluous[15].

Assuming, arguendo, that the Fourth Circuit only meant to decide that where

---

[14] "(f)
The written contract (referred to in this subject) between the Secretary and an individual shall contain ____ . . .
(4) such other statement of the rights and liabilities of the secretary and of the individual, not inconsistent with the provisions of this subpart." (Emphasis Supplied)

[15] It is important to keep in mind that no court has even yet permitted the Petitioner an opportunity to gather his facts and prepare his argument that the parol evidence rule, if necessary, provides a basis for the inclusion of the government's promise to refrain from assigning him to the IHS. The question of whether there was included a bargain to consider Dr. Ledwith's wife's circumstances is not, because of the provisions of 42 U.S.C §§254*l*(f) and (former) 254f, a parol evidence question.

statutory provisions conflict with contractual agreements the statute must prevail, even that would not apply here. The government argues that the statute does not have the room to provide NHSC personnel the authority to offer scholars a contract which excludes the IHS as a service location and promises consideration of spousal needs. However, it is obvious that the statute provided to HHS all of the authority which it needed.

The Statute establishes that a doctor who has received scholarship aid and completed his training may repay it by serving for a period of time (in no event less than 2 years):

> ". . .as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which he is assigned by the Secretary as a member of the Corps, or as otherwise provided in this

subpart;". 42 U.S.C. §2541 (f)(1)(B) (Emphasis Supplied)

Similarly, the Contract which Dr. Ledwith signed (App. 162-176.) provided:

> "The applicant agrees to:
> . . .
> 4. Serve his or her period of obligated service by providing health services, as determined by the Secretary:
>
> a. In the full time clinical practice of his or her health profession as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or as a civilian member of the Corps in a health manpower shortage area designated under Section 332 of the Public Health Service Act ("Act")". (Emphasis Supplied)

Unquestionably the choice of assignment for any scholar is to be the Secretary's rather than the student's. However, it is just as clear that neither the Act nor the contract specify when or in what manner the Secretary may or shall exercise his authority to so designate so long as the assignment is to an HMSA.

Rendleman, supra at 1543. The point is that Congress did not so restrict the Agency that it could not, if it so chose, offer scholars, in general or in particular cases, contracts which excluded the prospect of assignment to any particular geographic region or service such as the IHS.

Whether considered in the context of the statute or the contract, the question of whether Dr. Ledwith's obligation did or did not include a provision that he need not serve in the IHS achieves the dignity of a material justiciable issue. Furthermore, the affidavits of the doctors which are a part of this record present a substantial question of fact as to whether the Secretary actually exercised that authority, excluded any necessity of serving with the IHS and promised to give

reasonable consideration to a scholar's spouse's career when assigning the scholar to a service area.

2. Whether the Government Acted Arbitrarily and Capriciously.

The trial Court concluded that the only perch from which to assess the actions of the government was whether or not the government acted arbitrarily or capriciously in assigning Dr. Ledwith to the IHS. Despite the fact that discovery addressed to that very issue was still pending when summary judgment was granted the trial court found and the court of appeals affirmed that the government's actions vis a vis Dr. Ledwith were reasonable. With all due respect, even if the Court totally discounted Dr. Ledwith's contractual claims it would be impossible

to make a determination of the reasonableness of the government's actions on the basis of the incomplete record before the court.

The government had statutory obligations to treat Dr. Ledwith reasonably in the assignment process. Consider the following:

> a. The statutory guideline directing the Secretary to "seek to assign to an area a Corps member who has (and whose spouse, if any, has) those characteristics which increase the probability of the member's remaining to serve the area upon completion of his assignment" 42 U.S.C. § 254f (f)[16];

---

[16] Sub-section (f) was struck by the 1990 amendments to the Act. Pub. L. 101-597, §103(b)(1).

Consider also the pledge in the Applicant Information Bulletin that NHSC staff would attempt to assist scholars in meeting spousal needs "insofar as available sites and the needs of the NHSC allow"

Unlike the Fourth Circuit, other circuits have concluded that the NHSC has held itself out to prospective scholarship applicants as being concerned with their welfare. "The application and assignment procedure used by the Secretary accommodates the recipients' personal preferences to the extent that their preferences do not interfere with the redistributive purpose of the statute." United States v. Duffy, 879 F.2d 192 (6th Cir. 1989) While the stated purpose of the program was to rectify the geographic maldistribution of health care professionals, its apparent solicitude for the personal needs of its scholars was certainly an attractive feature to potential applicants.

In short, there is abundant evidence that in this case the NHSC abused its

discretion in its entire handling of the placement of Dr. Ledwith, and in particular in its allocation of him to the IHS. If the assignment of Dr. Ledwith to the IHS was arbitrary and capricious and, hence, invalid under the Administrative Procedure Act, then the government is not entitled to the damages which it now seeks. Furthermore, the court of appeals may not forestall Petitioner's request to have a full and fair hearing on the question by simply finding that "the government has the stronger position".

V. CONCLUSION

For this Petitioner this is a many-faceted case which has taken on a great enough personal significance to have driven him to persevere through a painful, expensive and difficult process to seek

the assistance of this Court. To this Court, however, we believe it may be perceived as a three issue case:

1. Does the Statute require that applicant scholars be assigned to specific facilities before the Agency may threaten them with default?
2. Did due process require that in this case the Agency continue its three phase system of scholar assignments and investigate Dr. Ledwith's need for a waiver?
3. Does the contract between the Agency and the scholars which the statute mandates have any governing effect upon the relationship of the parties or is it superfluous?

No matter on which level the case is approached it must be apparent that Dr. Ledwith has been treated shabbily by the government and that there is good reason to redress his complaint.

Dr. Ledwith was a young man with a purpose when first approached by the government with an offer of funds for his education. There seemed to be a certain serendipity between his long range plans and those of the scholarship program. Being a cautious individual he explored the program thoroughly and in the course of doing so he received two essential (to him) assurances; first, that there would not be an involuntary assignment to the Indian Health Service which he perceived as offering locations only in the west and, second, that his wife's future professional needs would be considered by

the Agency when making a site assignment for him. Other than that he believed and understood that he would have to serve wherever sent. He thought, however, that there would be some check upon Agency excesses by reason of the fact that he could always apply to the Secretary of HHS for "hardship" consideration.

Dr. Ledwith's troubles started when the first substantive communication he got from the Agency was his allocation, during phase two, to the IHS. They continued when he was told that in his case there would be no third phase processing and, consequently, no chance of avoiding the IHS. They culminated in the pronouncement by the lower court that the contract he signed was meaningless.

This Court now has the opportunity to explain to Dr. Ledwith and the literally

thousands of doctors who, as a result of the Agency's intransigence, find themselves in the same web, that they can expect that a contract purposefully and carefully made with the government will be honored and that the "ground rules" will not be changed midstream.

The Ninth Circuit said it best, and we can not improve upon their thought or their prose:

> "The Secretary administers a statute with specific provisions with a suggestion of almost military precision in the concept of "a corps." The penalty for a physician in breach of the obligated service requirement is a heavy one, far exceeding the actual monetary loss to the United States. **The United States expects its beneficiaries to turn square corners in dealing with it. Similarly, the United States is required to turn square corners in dealing with its beneficiaries**. The Secretary failed to take the steps necessary to put St. Thomas into

default." (Emphasis Supplied)
966 F.2d at 486

Respectfully Submitted,

James J. Ledwith, Jr., M.D.

By _____
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No._____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1993

♦

JAMES J. LEDWITH, JR., M.D.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

♦

Appendix For Petition For A Writ Of Certiorari To The United States Court of Appeals For The Fourth Circuit

♦

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI

♦

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**3:92CV390**
	)	
JAMES J. LEDWITH, JR.,	)	
	)	
Defendant.	)	

MEMORANDUM

This matter is before the Court on the Plaintiff's motion for summary judgment and the Defendant's cross motions for summary judgment.

The relevant facts surrounding this case are undisputed. James J. Ledwith, Jr. attended medical school at the Medical College of Virginia ("MCV") during the years 1979 - 1983. He applied for a National Health Service Corps Scholarship

during the Spring of his first year and was awarded a scholarship for tuition, fees, stipend and other costs for the academic years 1980-81 and 1981-82. The Defendant received a total of $20,758 from this scholarship.

The National Health Service Corps ("NHSC") Scholarship Program provides medical students with financial assistance while enrolled in medical school in exchange for their service in a designated Health Manpower Shortage Area ("HMSA") following graduation. Students accepted into the program enter into a written scholarship contract, the terms of which are established by statute. 42 U.S.C. § 254 L(b)-(q). A principal element of this contract requires the student to agree to serve for the applicable period in a health manpower shortage area. 42

U.S.C. § 254 L(b)(4). If the scholar fails to perform the service obligation for any reason, that student becomes liable for liquidated damages equal to three times the amount of the total scholarship award plus interest at the maximum legal rate. 42 U.S.C. § 254 o(b)(1).

Following graduation from medical school in 1983, Defendant's service obligation was deferred for three years to enable him to complete a post-graduate residency. Upon completion of his residency, and in exchange for having received financial assistance, the Defendant was required to begin two years of service on July 1, 1986.

The normal assignment for service of medical school graduates is a three phase process. Since there are usually more

HMSA's than scholars, each year the Secretary compiles a list of the highest priority sites known as the HMSA Placement Opportunity List ("HPOL"). In 1985-86, the year in question, the first phase (the Early Decision Alternative) ran from July 1 to October 31, 1985. During this phase all scholars were free to compete for all sites in their specialty on the HPOL nationwide.

During the second phase, scholars who did not locate a position during the Early Decision Alternative phase were then assigned to a specific state, region, the Bureau of Prisons, or the Indian Health Service. Although these scholars were assigned to the specific area, they were still free to compete for any HPOL position within their assigned area until April 15, 1986. Any scholar still

unmatched by April 15 was to finally have been assigned by the Secretary to a specific site in order for the doctor to fulfill his obligation.

The Defendant was not successful in finding placement during phase one and was subsequently assigned to the Indian Health Services. In letters dated March 13, 1986 and April 13, 1986, the Defendant notified the Director of the NHSC as well as the Chief of the Manpower Support Branch of the Indian Health Services. Consequently, on June 12, 1986, the Defendant was notified that as of July 1, 1986, he would be considered in default of his NHSC Scholarship if he indeed failed to begin his service obligation as he asserted in his letters.

In June of 1986, Defendant notified the NHSC that he did not wish to be

considered in default of his scholarship. In July the NHSC responded by informing the Defendant that they were still interested in his service and that if he would execute a Forbearance Agreement and serve his required two years, his debt would be discharged. The Defendant agreed to execute the Forbearance Agreement, but only if the NHSC agreed to limit his service to sites within 60 miles of Tappahannock, Va. The NHSC found this restriction unacceptable and again found the Defendant in default.

In December of 1987, Congress enacted a special repayment plan for NHSC scholars in default which provided an option for service equal to 150 percent of their service obligation at a site on the Supplemental HMSA Placement Opportunity List ("SHPOL"). The Defendant exercised

this option to repay his scholarship by signing an agreement on May 28, 1988. The Defendant, however, failed to match a service site before the deadline and was once again placed on default status. On June 23, 1989, the Defendant was offered one final opportunity to execute a Forbearance Agreement in lieu of repaying his debt monetarily. The Defendant did not accept this offer.

Federal Rule of Civil Procedure 56 governs motions for summary judgment. Pursuant to Rule 56, summary judgment is appropriate only where parties do not dispute material facts that might affect the outcome of an action. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). To defeat summary judgment, a nonmoving party, who will bear the burden of proof at trial on a dispositive issue,

must go beyond his or her pleadings with affidavits, depositions, interrogatories or other admissible evidence to show specific facts that amount to a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324, (1985). Where the parties show no dispute of material fact, summary judgment is appropriate. In the present case, the facts are not in dispute, however, both parties offer a different interpretation.

The Government's position is straight forward. They claim that the Defendant entered into a binding agreement with the Department of Health and Human Services whereby the Defendant would receive a NHSC Scholarship for tuition, fees, stipend and other costs. In return, the Defendant agreed to serve in a health manpower shortage area for the obligated period or

pay liquidated damages. The Government further contends that the Secretary reasonably declared the Defendant in default and that this decision must be upheld by this Court unless the action was "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law." United States v. Hatcher, 922 F.2d 1402, 1407 (9th Cir. 1991).

The Defendant asserts two affirmative defenses. The Defendant claims he was deprived of his due process by the Secretary. First, the Defendant claims the Secretary deprived him of due process when he declared the Defendant in default without assigning him to a final site. This theory is not based on a standard of law, and it is illogical in that it would require the Secretary to make a specific assignment in disregard of the two letters

from the Defendant expressing his unwillingness to serve. It would complicate the Secretary's ability to make assignment decisions and possibly prevent the assignment of another physician to a needy site. This argument contradicts the recent opinion from the Ninth Circuit Court of Appeals in United States v. St. Thomas, No. 915427, Slip Op. 6265 (9th Cir. June 4, 1992), which noted, although in dicta, that an assignment to the Bureau of Prisons or the Indian Health Service would fulfil the particularity requirement. The Defendant's position also disregards the subsequent attempts by the Secretary to convince the Defendant to repay his debt by performing his service. Despite all these attempts, the Defendant remains in default.

The Defendant also claims a deprivation of due process in that his service obligation allegedly did not receive serious consideration for a hardship waiver. Nothing in the record supports this bare allegation.

Both the U.S. Code and the scholarship agreement give the Secretary the authority to suspend or to waive a scholar's service obligation in cases that involve extreme hardship. On two occasions the Defendant requested that his obligation be considered for such a waiver. This waiver, which is completely left to the Secretary's discretion, was never granted, and according to the Defendant, again without evidentiary support, was never seriously considered. The Defendant claims his situation merited a hardship waiver because his wife, a

licensed orthodontist, could not practice her specialty if he served in the Indian Health Service. Although the Defendant is still arguing the merits of his hardship requests, he fails to provide any standard as to the review for hardship requests that the Secretary allegedly violated. It appears that this type of waiver is completely discretionary.

The Defendant's second defense relies on the common law contract principle of estoppel. The Defendant claims that the following statements were made to him by recruiters prior to his signing the scholarship agreement:

1.) That there would be not involuntary assignment to the Indian Health Service;

2.) That a spouse's professional needs would be taken into consideration when determining assignments for scholars;

3.) That placement in the service would be a three phase process, the last phase being the assignment to a specific service facility; and

4.) That the list of facilities included in the third, forced-match phase, would be drawn from all currently available sites.

Before the doctrine of estoppel may be raised against the government, the party asserting estoppel must first establish an affirmative act of misconduct by an agent of the government beyond mere negligence. United States v. Hatcher, 922 F.2d 1402 (9th Cir. 1991). The Defendant must also establish that the government official making the statements were

authorized to do so. The government is not bound by unauthorized acts of its agents. Salgue v. United States, 663 F.2d 968 (1981). In the present case, the Defendant has only recently attempted to use a supplemental affidavit to identify the party or parties he claims disseminated the information on the scholarship program that was contrary to the language in the scholarship agreement. The Defendant does not attempt to argue, nor could he, that the government agent had any authority to make the contradictory statements.

Even if the Defendant stated a sufficient claim of estoppel, there is some question as to whether common law contract principles govern NHSC scholarships. Although this issue has not been addressed by the Fourth Circuit, the

Ninth Circuit has held on two occasions that the Secretary's obligations in NHSC scholarships are derived from the statute and not from contract principles. United States v. Hatcher, 922 F.2d 1402 (9th Cir. 1991); Rendleman v. Bowen, 860 F.2d 1537 (9th Cir. 1988).

As stated above, the parties have not established a disputed issue of material fact. For this reason summary judgment for one of the parties is appropriate. To decide this questions, the following two issues must be resolved:

1.) whether the government has established a binding agreement between the NHSC and the Defendant obligating the Defendant to perform the required services or pay liquidated damages; and

2.) if such a binding agreement existed, whether the Defendant has established an affirmative defense that will relieve his obligation.

There is no legitimate dispute that the Defendant accepted the NHSC scholarship with the knowledge that he was obligated to repay the debt with services or liquidated damages. Although the Defendant may not have fully appreciated the significance of being assigned to the Indian Health Services, this possibility was never concealed by the NHSC. The NHSC does not have to waive his obligation simply because the Defendant subsequently chose to marry an orthodontist that can not practice in the jurisdictions of the Indian Health Services. Even if this were the case, the Defendant failed to take advantage of the opportunity presented to

him in May of 1988 to perform service at a site on the NHSC Supplemental HMSA Placement Opportunity List.

For these reasons, the Plaintiff's motion for summary judgment will be Granted, and the Defendant's cross motion will be Denied.

The parties were given the opportunity to submit post-hearing affidavits as to the amount of potential damages. Since the Defendant did not respond or object to the Government's calculation of damages, the Court concludes that the amount is undisputed. The judgment against the Defendant, based on the Plaintiff's affidavit as to updated damages, is $62,274.00 principal, plus $125,684.31 interest, or a total of $187,958.31.

An appropriate Order shall follow.

Let the Clerk send a copy of this Memorandum and the accompanying Order to all counsel of record.

/s/ Robert R. Merhige, Jr.

UNITED STATES DISTRICT JUDGE

11-5-92
Date

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**3:92CV390**
	)	
JAMES J. LEDWITH, JR.,	)	
	)	
Defendant.	)	

JUDGMENT ORDER

For the reason stated in the accompanying memorandum, and deeming it just and proper so to do, the Plaintiff's motion for summary judgment in this matter be and the same is hereby GRANTED, and the Defendant's cross motion is DENIED.

Judgment in favor of the Plaintiff and against the Defendant in hereby entered as follows; $62,274.00 principal,

$125,684.31 interest, for a total of $187,958.31 in liquidated damages, with interest from this date at a rate of 3.24% per annum.

Let the Clerk send a copy of this Order to all counsel of record.

/s/ Robert R. Merhige, Jr.

UNITED STATES DISTRICT JUDGE

11-5-92
Date

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 92-2613
	)	
JAMES J. LEDWITH, JR., M.D.,	)	
	)	
Defendant-Appellant	)	

Appeal from the

United States District Court

for the Eastern District of Virginia,

at Richmond.

Robert R. Merhige, Jr.

Senior District Judge.

(CA-92-390-R)

Argued: May 5, 1993

Decided: July 14, 1993

Before RUSSELL and HAMILTON, Circuit Judges, and HEANEY, Senior Circuit Judge of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: Wayne Lee Emery, WILKINS, DAVISON & EMERY, Warsaw, Virginia, for Appellant. Nicholas Stephan Altimari, Assistant United States Attorney, Richmond, Virginia, for Appellee. **ON BRIEF:** Richard Cullen, United States Attorney, C. Stuart Greer, Student Assistant to the United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

OPINION

PER CURIAM:

James Ledwith (Ledwith) appeals the district court's grant of summary judgment in favor of the government, arguing that genuine issues of material fact remain as to whether the National Health Service Corps (NHSC) breached its scholarship contract with him, or acted, arbitrarily, capriciously, or abused its discretion by placing him in default of his scholarship obligation. Finding no error, we affirm.

I

Because this appeal involves the NHSC, it is helpful to begin our discussion with an overview of the relevant statutes before reviewing the particular facts involved in this appeal.

A

The NHSC was established by Congress not to subsidize the education of health care professionals, but rather to rectify "the maldistribution of health care manpower in the United States," *Rendleman v. Bowen*, 860 F.2d 1537, 1539 (9th Cir. 1988), by providing "the delivery of health services in health manpower shortage areas." 42 U.S.C. § 254d(a)(2).[1]

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[1] The legislative history makes this point unequivocally clear:

> The committee wishes to emphasize in the strongest possible terms that it does not view the National

(continued...)

To "assure [the NHSC] an adequate supply of trained physicians, dentists, and nurses," 42 U.S.C. § 2541(a), Congress created the National Health Service Corps Scholarship Program (the Program). 42 U.S.C. § 2541. The Department of Health and Human Services was charged with the responsibility for promulgating rules and regulations necessary to implement the Program.

A medical student who chooses to participate in the Program must submit an application and sign a contract that

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[1](...continued)
Health Service Corps Scholarship Program as a mechanism solely intended to subsidize health professional education. Rather, in return for substantial subsidization of the cost of education, the committee views the National Health Service Corps Scholarship Program as a means to overcome a geographic maldistribution of health professionals.

S. Rep. No. 887, 94th Cong., 1st Sess. 201 (1975), *reprinted in* 1976 U.S.C.C.A.N. 4947.

conforms to a detailed statutory framework. Under the contract, the government provides financial assistance to scholarship recipients in the form of payment of educational expenses and a stipend. 42 U.S.C. § 2541(g)(1). In return, the scholarship recipient signs a contract promising to serve one year in a Health Manpower Shortage Area (HMSA) to which he is assigned by the Secretary of Health and Human Services (the Secretary), for each year he receives government assistance, or two years, whichever is greater. 42 U.S.C. § 2541(f)(1)(B); 254m. There are three ways a scholarship recipient can fulfill his obligation: (1) as a commissioned officer in the Public Health Service or a civilian employee of the NHSC, 42 U.S.C. § 254m; (2) in private practice in a HMSA ("private practice

option"), 42 U.S.C. § 254n; or (3) as an employee of a nonfederal entity such as a state run community clinic ("private practice assignment"), 42 U.S.C. § 254n.

Under the Program, the Secretary must assign scholarship recipients to HMSAs in accordance with their written contract. 42 U.S.C. § 254m(d). A HMSA may consist of a geographical region, a population group, or a particular medical facility. 42 U.S.C. § 254e(a)(1). Graduating medical doctors in the Program cannot begin their service obligation immediately after graduating from medical school. Rather, medical doctors must complete at least one year of postgraduate training before beginning the period of service. 42 C.F.R. § 62.9(b). At the scholarship recipient's request, the Secretary must defer the service obligation for up to

three years to allow the scholarship recipient "to complete an internship, residency, or other advanced clinical training." 42 U.S.C. § 254m(b)(5)(A); 42 C.F.R. § 62.9(a).

Scholarship recipients fulfill their service obligations by serving in designated HMSAs. In each year, it is not unusual that there are more HMSAs than there are scholarship recipients to fill those positions. As a result, the Secretary compiles a list of the highest priority sites. The list is known as the HMSA Placement Opportunity List (HPOL). In 1985-86, scholarship recipients were matched to HPOL sites in a three-phase placement cycle. The first phase (Phase I), the Early Decision Alternative (EDA), ran from July 1 to October 31, 1985. During this phase, all scholarship

recipients freely competed for all sites in their specialty on the HPOL by applying for specific sites. The object of Phase I was to allow the facility and the scholarship recipient to make a mutually acceptable pairing which, in theory, would result in the scholarship recipient remaining in the area after the completion of his required service. The scholarship recipients who did not locate a position in the EDA phase were then assigned to a specific state, region, the Bureau of Prisons, or the Indian Health Service (Phase II). Once assigned, the scholarship recipients were free to compete for any HPOL position open within their assigned area until April 15, 1986. Any scholarship recipient who was not matched to a site by April 15, was assigned to a specific site in order for

the scholarship recipient to fulfill his or her obligation (Phase III).

If a scholarship recipient does not perform the service obligation for any reason, he becomes liable for liquidated damages equal to three times the amount of his total scholarship award, plus interest at the maximum legal rate calculated from the date of each payment. 42 U.S.C. § 254o(b)(1). The Secretary is directed by the statute to adopt regulations which "provide for the partial or total waiver or suspension of any obligation of service or payment by any individual . . . whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if the enforcement of such obligation with respect to any individual would be unconscionable." 42 U.S.C. § 254o(d)(2).

"Compliance by a participant will be considered impossible if the Secretary determines . . . that the participant suffers from a physical or mental disability . . . resulting in a permanent inability of the participant to perform the service . . . ." 42 C.F.R. § 62.12(c). In determining whether a service obligation poses an undue hardship and is unconscionable, the Secretary will consider certain factors: "(1) The participant's present financial resources and obligations; (2) The participant's estimated future financial resources and obligations; and (3) The extent to which the participant has problems of a personal nature, such as physical or mental disability . . . which will intrude on the participant's present and future ability to perform as to raise a presumption that

the individual will be unable to perform the obligation incurred." 42 C.F.R. § 62.12(d).

B

Ledwith attended medical school at the Medical College of Virginia from the Fall of 1979 until his graduation in the Spring of 1983. In March 1980, Ledwith applied for a NHSC scholarship. At that time, Ledwith asserts he was given assurances that his future wife's professional needs would be given every consideration in the selection of a site and that he would not be involuntarily assigned to the Indian Health Service (IHS). Ledwith was concerned about assignment to the IHS because most of the placements in the IHS were in the Midwest and West, areas in which his future wife,

an orthodontist, would not be licensed to practice orthodontics. These assurances were not consistent with the NHSC Application Information Bulletin supplied to Ledwith, which, as to a spouse's needs, provided:

> The process of site matching allows individuals to discuss site locations with knowledgeable regional office staff and to do individual investigation of local schools and job opportunities relevant to each location as a part of the process of narrowing down available sites during the site-matching visit. The responsibility for identifying the needs of one's spouse and finding resources which meet those needs lies with you and your spouse. The regional office staff will attempt to assist in meeting those needs insofar as available sites and the needs of the NHSC allow.
>
> In cases where spouses are employed in jobs or in schools or in residency programs which they do not wish to leave, available sites and the needs of the NHSC are the determinant in

making assignments, but regional office staff will take individual needs into account to the degree possible.

(Joint Appendix (J.A.) 180). As to potential service assignments, the Bulletin read:

> Locations for Scholarship Program participants to fulfill their service obligations will be in those designated health manpower shortage areas with the greatest need at the time of assignment. Since health manpower shortage area designations and priorities continually change, assignments cannot be made until approximately six months prior to a participants availability for service.
>
> The NHSC will ask participants their location preferences about 1 year prior to assignment. The NHSC will attempt to match these preferences, especially when there is likelihood that participants will continue to practice in the shortage areas after their service obligations are completed. However, to comply with legislative requirements and to avoid staffing imbalances, the NHSC

> reserves the right to make final decisions on assignments.
>
> Potential obligated service assignment locations include a limited number of designated health manpower shortage areas which are facilities of the Indian Health Service or Federal Prison facilities staffed by the Bureau of Medical Services.

(J.A. 171).

On August 2, 1980, Ledwith received a scholarship award for the period beginning July 1, 1980, and ending June 30, 1981. On June 12, 1981, Ledwith received a continuing scholarship award for the period beginning July 1, 1981, and ending June 30, 1982. Ledwith received a total of $20,758 from the Program. Following graduation, Ledwith's service obligation was deferred for three years to enable him to complete a postgraduate residency in family practice medicine. Upon completion, Ledwith was required to begin

two years of service in the NHSC on July 1, 1986.

In July 1985, Ledwith, along with all other scholarship recipients, was mailed a placement package to assist in securing a placement in 1986. These materials stated that any scholarship recipient who did not match during the EDA phase, which concluded on October 1, 1985, would be assigned to a region, state, or program to find a placement. In preparation for the selection process, Ledwith completed a Site Selection Questionnaire on which he indicated that he preferred to work in an area in which his wife would be licensed to practice orthodontics. The areas of preference were located in the East and South, ostensibly the areas with the most intense competition among scholarship recipients. Ledwith was not successful in

finding a placement during Phase I because he "did not rank high enough on [his] Site Selection Questionnaire on any of the States [he] requested in comparison with other physicians requesting the same States." (J.A. 242). As a result, on December 12, 1985, Ledwith was informed by the NHSC that he was assigned to the IHS. This led to a barrage of correspondence and communication between the parties. We will highlight the relatively important ones.

On December 17, 1985, Ledwith wrote to the NHSC asking for a statement of his financial obligation should he be placed in default status. On January 3, 1986, Ledwith wrote the NHSC to advise that he reviewed the materials from the IHS and found no sites which were suitable to him because none of them were in any states

where his wife was licensed to practice orthodontics. On January 10, 1986, the NHSC gave Ledwith an accounting should he default. On January 29, 1986, Ledwith wrote the NHSC stating that if assigned to the IHS, he would not be able to meet his and his wife's financial loan obligations due to her inability to practice orthodontics. On February 3, 1986, the NHSC wrote Ledwith indicating that due to the need for doctors in the IHS. On February 13, 1986, Ledwith was informed by the NHSC that the IHS was in need of dental services and that part of the Aberdeen area of South Dakota was without orthodontic services. Ledwith was advised that his wife should consider initiating an orthodontics practice in Pine Ridge, South Dakota. That letter also summarized Ledwith's situation:

> [Y]ou remain assigned to the IHS and may not fulfill your obligation in Virginia. If you are not matched by April 15, you will be site assigned by the NHSC. If you do not accept assignment, you will be placed in default of your obligation.

(J.A. 197).

Thereafter, Ledwith arranged a site visit to Pine Ridge, but canceled the visit, ostensibly due to Ledwith's view that the position in Pine Ridge would be unacceptable because the dental practice would not entail enough orthodontic work for his wife, the salary was not commensurate with his wife's experience, and the position involved travelling which would be unbearable with a small child at home.[2]

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[2] The record is not clear whether the dental position in South Dakota would have required Mrs. Ledwith to possess a license to practice in South Dakota. In his March 10, 1986 letter, which delineated his reasons for finding his wife's proposed dental

(continued...)

On March 13, 1986, Ledwith wrote the NHSC stating that he would not accept an assignment from the IHS or the NHSC unless his wife was able to practice orthodontics. On March 19, 1986, Ledwith called the NHSC and indicated that he wanted a reassignment from the IHS to a site in Aylett, Virginia, where he would fulfill his NHSC scholarship obligation through the "private practice option."[3]

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[2](...continued)
position unacceptable, Ledwith does not mention licensing as an obstacle to this position. It is conceivable that since the position was with the IHS or on a reservation, no state licensing requirements applied.

[3] The record reflects that the King William Community Health Center, serving northern King William and King and Queen Counties in Virginia, was removed from the HPOL in August 1985. The NHSC removed sites within King William and King and Queen Counties because sites within that area were not considered to be of sufficient high priority to warrant inclusion on the 1986 HPOL. Among the factors considered by the NHSC in determining whether to include sites within King William and King and Queen Counties on the 1986 HPOL were the specific needs of the shortage areas and the (continued...)

Ledwith was informed that he remained assigned to the IHS. On April 13, 1986, Ledwith wrote the NHSC and indicated that his wife could not practice orthodontics at any available site within the IHS. In conclusion, Ledwith stated: "As I see no further progress in this matter I must inform you that I do not expect to be able to fulfill my scholarship commitment with the NHSC through a position in the Indian Health Service." (J.A. 258). Shortly after this correspondence, Ledwith was notified that as of July 1, 1986, he would be considered in default of his NHSC scholarship obligation if he indeed failed to begin his service obligation as he indicated by his letters. The NHSC did

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[3](...continued)
likelihood that the areas could recruit health care providers from outside the pool of obligated NHSC scholarship recipients.

not assign Ledwith to a particular position after April 15, 1986.

In June 1986, Ledwith notified the NHSC that he did not wish to be considered in default. In July, the NHSC indicated it was interested in his professional services and advised Ledwith that if he would execute a Forbearance Agreement and serve his two years, his debt would be discharged. Ledwith executed the Forbearance Agreement, but only agreed to serve within a sixty mile radius of Tappahannock, Virginia, because of his wife's orthodontics practice. The NHSC found this unacceptable, but offered to assign Ledwith to a position in an area where his wife would be licensed to practice orthodontics. Ledwith responded in a letter dated September 21, 1987, that he intended to remain where he was;

however in later correspondence, Ledwith agreed to move out of Tappahannock only if it was necessary and reasonable.

In December 1987, Congress enacted a Special Repayment Program for NHSC scholarship recipients which provided an option for service equal to 150 percent of their service obligation at a site on the Supplemental HMSA Placement Opportunity List (SHPOL). On May 28, 1988, Ledwith exercised this option; however, he failed to achieve a match before the deadline and again was placed in default. On June 23, 1989, Ledwith was offered one last opportunity to execute a Forbearance Agreement. Ledwith declined.

The government filed a complaint in the United States District Court for the Eastern District of Virginia alleging that Ledwith breached his NHSC scholarship

agreement in addition to breaching the Special Repayment Program agreement. On October 2, 1992, the government moved for summary judgment; on cross-motions for summary judgment, the district court granted the government's motion for summary judgment and denied Ledwith's motion for summary judgment. On November 5, 1992, the district court entered a judgment against Ledwith in the amount of $187,958.31, an amount representing $62,274.00 in principal and $125,684.31 in interest. Ledwith now appeals.

II

Appellate review of the granting of a party's motion for summary judgment is *de novo*, and the court of appeals uses the same standards as the district court. Summary judgment is appropriate only if there are no genuine issues of material

fact. *Charbonnages de France v. Smith*, 597 F.2d 406 (4th Cir. 1979). An issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Factual disputes that are irrelevant or immaterial are properly excluded from consideration. *Id.* The party seeking summary judgment has the initial burden to show absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). This burden does not require the moving party to show evidence that proves absence of a genuine issue of material fact, but only to point out its absence. *Id.* The responding party may not rest upon mere allegations or denials, *Anderson*, 477 U.S. at 248, and summary judgment is

appropriate if the responding party fails to show, under Rule 56, the existence of an element essential to that party's case. *Celotex*, 477 U.S. at 322. A mere scintilla of evidence supporting the case is insufficient. *Anderson*, 477 U.S. at 252. The responding party is, however, entitled to have all reasonable inferences and questions of law resolved in his favor. *Id.* at 255.

III

Ledwith initially argues that contract principles govern the interpretation of his agreement with the NHSC. This position has been uniformly rejected. *See United States v. Citrin*, 972 F.2d 1044, 1049 (9th Cir. 1992); *United States v. Arron*, 954 F.2d 249, 251 (5th Cir. 1992); *United States v. Melendez*, 944 F.2d 216, 219 (5th Cir.

1991); *United States v. Hatcher*, 922 F.2d 1402, 1406-07 (9th Cir. 1991); *United States v. Rendleman*, 860 F.2d 1537, 1541-42 (9th Cir. 1988). The court in *Rendleman* observed:

> In passing the statute, Congress intended to implement certain public policy goals by conditioning receipt of scholarship aid upon compliance by the recipient with federal statutory and administrative directives. These conditions did not arise from a negotiated agreement between the parties; rather, they are provided for in the statute. Statutory intent, therefore, is more relevant to the interpretation of these conditions than of common law contract principles.
>
> In addition, the plain language of the statute demonstrates that Congress did not intend that the contract principles govern the interpretation of the relationship between the Secretary and a scholarship recipient. The only terms contained in the written agreement signed by a recipient are those required by the

> statute--that the recipient agrees to accept the aid, that upon completion of the educational program the recipient will serve in an HMSA, and that the recipient will pay triple damages if found in default of the obligation. 42 U.S.C. § 254L(f). Other conditions that affect scholarship recipients' service, such as the designation of HMSAs, are not included in the contract, although Congress addressed those issues in the statute. Thus, the obligations of the Secretary are to be based on statutory and not contract principles.

Rendleman, 860 F.2d at 1541-42 (citation omitted).

We find this reasoning persuasive and glean no countervailing justification to reject the reasoning of *Rendleman* and other courts that have embraced the notion that contract principles do not govern the resolution of controversies such as the one before us. Ledwith offers nothing persuasive. Accordingly, the contract principles relied on by Ledwith have no

application to his NHSC scholarship agreement. Consequently, we must view this case under the Administrative Procedure Act. *Hatcher*, 922 F.2d at 1407.

IV

Ledwith raises numerous other assignments of error, but only one merits discussion. Ledwith contends that the NHSC's actions were arbitrary, capricious, or an abuse of discretion because, in assigning Ledwith to the IHS, the NHSC ignored his spouse's needs. 5 U.S.C. § 706(2)(A). The government responds that it was under no statutory obligation to place Ledwith in a place where his wife could practice orthodontics. We believe the government has the stronger position.

The Program was created to provide adequate health care to those areas in dire need of such services. *Rendleman*,

860 F.2d at 1543 ("The very purpose of this Congressional program is to have new health care professionals deliver medical services to areas suffering shortages of medical personnel."). To further this clearly manifested legislative objective, Congress gave the NHSC the authority to be the final arbiter on the placement of scholarship recipients. *Id.* ("Congress has plainly given the Secretary the authority and discretion to make a final determination on the placement of scholarship recipients.") (citation omitted); *Arron*, 954 F.2d at 252 ("[T]he statutory scheme governing the NHSC scholarship program makes clear that the Secretary of the HHS retains sole authority to determine how to administer the program, including site selection.")

Thus, it is evident the statutory scheme is not designed to ensure that a scholarship recipient is placed in an area of his preference. Rather, given the underlying purposes of the Program, the Program is designed to give the NHSC broad and unbridled discretion in making placements. A contrary conclusion would be inconsistent with Congress' intent to cure the maldistribution of health care professionals in this country. *See United States v. Duffy*, 879 F.2d 192, 197 (6th Cir. 1989) ("Indeed, a diminution of the Secretary's discretion in assigning recipients would exacerbate the effect of those factors that Congress articulated as causing the geographic maldistribution of physicians.").

The information provided to Ledwith made this unequivocally clear: "However,

to comply with legislative requirements and to avoid staffing imbalances, *the NHSC reserves the right to make a final decision on assignments.*" (J.A. 171) (emphasis added). In addition, the materials supplied to Ledwith made it abundantly clear that the NHSC would work with scholarship recipients in finding suitable sites and encouraged individuals to investigate job opportunities. Finally, those materials stated that the "responsibility for identifying the needs of one's spouse and find resources which meet those needs lies with you and your spouse." (J.A. 180). Thus, Ledwith knew, before he entered the Program, that the decision on final assignments would ultimately be made by the NHSC and that it was his responsibility to find suitable employment for his wife.

From our perspective, Ledwith only wanted to fulfill his service obligation on terms he dictated. This point is most evident by the letter enclosed with his Forbearance Agreement in which Ledwith states that he would not work at a site further than sixty miles from Tappahannock, Virginia. The record reflects that the NHSC made reasonable efforts to accommodate Ledwith. After Ledwith executed the Forbearance Agreement, the NHSC responded that there were no more vacancies in Virginia, but agreed to assign him to a site where his wife could practice as an orthodontist. Ledwith ultimately did not achieve a match. Suffice it to say, based on the foregoing, we cannot conclude the NHSC's actions can be deemed arbitrary, capricious, or an abuse of discretion.

V

We have reviewed Ledwith's additional assignments of error and find them to be without merit. Accordingly, the decision of the district court is affirmed.

AFFIRMED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED

August 10, 1993

No. 92-2613

CA-92-390-R

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JAMES J. LEDWITH, JR., M.D.

Defendant-Appellant

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel

requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Bert M. Montague

CLERK

42 U.S.C. § 254e

Health professional shortage areas

(a) Designation by Secretary; removal from areas designated; medical facility" defined

(1) For purposes of this subpart the term "health professional shortage area" means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit

private medical facility or other public facility which the Secretary determines has such a shortage. The Secretary shall not remove an area from the areas determined to be health professional shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health professional shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary.

(2) For purposes of this subsection, the term "medical facility" means a facility for the delivery of health services and includes--

(A) a hospital, State mental hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, community mental health center, migrant health center, facility operated by a city or county health department, and community health center;

(B) such a facility of a State correctional institution or of the Indian Health Service, and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C.A § 450f et seq.];

(C) such a facility used in connection with the delivery of health services under § 248 of this title (relating to hospitals), 249 of this title (relating to care and treatment of persons under quarantine and others), 250 of this title (relating to care and treatment of Federal prisoners), 251 of this title (relating to examination and treatment of certain Federal employees), 252 of this title (relating to examination of aliens), 253 of this title (relating to services to certain Federal employees), 247e of this title (relating to services for persons with Hansen's disease), or 256 of this title (relating to the provision of health services to homeless individuals); and

(D) a Federal medical facility.

(3) Homeless individuals (as defined in § 256(r) of this title) may be a population group under paragraph (1).

(b) Criteria for designation of health professional shortage areas; promulgation of regulations

The Secretary shall establish by regulation criteria for the designation of areas, population groups, medical facilities, and other public facilities, in the States, as health professional shortage areas. In establishing such criteria, the Secretary shall take into consideration the following:

(1) The ratio of available health manpower to the number of individuals in an area or population group, or served by a medical facility or other public

facility under consideration for designation.

(2) Indicators of a need, notwithstanding the supply of health manpower, for health services for the individuals in an area or population group or served by a medical facility or other public facility under consideration for designation, with special consideration to indicators of--

(A) infant mortality,

(B) access to health services,

(C) health status, and

(D) ability to pay for health services.

(3) The percentage of physicians serving an area, population group, medical facility, or other public facility under consideration for designation who are

employed by hospitals and who are graduates of foreign medical schools.

(c) Considerations in determination of designation

In determining whether to make a designation, the Secretary shall take into consideration the following:

(1) The recommendations of the Governor of each State in which the area, population group, medical facility, or other public facility under consideration for designation is in whole or part located.

(2) The extent to which individuals who are (A) residents of the area, members of the population group, or patients in the medical facility or other public facility under consideration for

designation, and (B) entitled to have payment made for medical services under Title XVIII or XIX of the Social Security Act [42 U.S.C.A. § 1395 et seq., 1396 et seq.], cannot obtain such services because of suspension of physicians from the programs under such titles.

(d) Health professional shortage areas in States; designation by Secretary; publication of list; annual review of designation

(1) In accordance with the criteria established under subsection (b) of this section and the considerations listed in subsection (c) of this section, the Secretary shall designate health professional shortage areas in the States, publish a descriptive list of the areas,

population groups, medical facilities, and other public facilities so designated, and at least annually review and, as necessary, revise such designations.

(2) For purposes of paragraph (1), a complete descriptive list shall be published in the Federal Register not later than July 1 of 1991 and each subsequent year.

(e) Notice of proposed designation of areas and facilities; time for comment

(1) Prior to the designation of a public facility, including a Federal medical facility, as a health professional shortage area, the Secretary shall give written notice of such proposed designation to the chief administrative officer of such facility and request

comments within 30 days with respect to such designation.

(2) Prior to the designation of a health professional shortage area under this section, the Secretary shall, to the extent practicable, give written notice of the proposed designation of such area to appropriate public or private nonprofit entities which are located or have a demonstrated interest in such area and request comments from such entities with respect to the proposed designation of such area.

(f) Notice of area designation to State Governor and appropriate public or nonprofit entities in area designated

The Secretary shall give written notice of the designation of a health

professional shortage area, not later than 60 days from the date of such designation, to--

(1) the Governor of each State in which the area, population group, medical facility, or other public facility so designated is in whole or part located; and

(2) appropriate public or nonprofit private entities which are located or which have a demonstrated interest in the area so designated.

(g) Recommendations to Secretary

Any person may recommend to the Secretary the designation of an area, population group, medical facility, or other public facility as a health professional shortage area.

(h) Public information programs in designated areas

The Secretary may conduct such information programs in areas, among population groups, and in medical facilities and other public facilities designated under this section as health professional shortage areas as may be necessary to inform public and nonprofit private entities which are located or have a demonstrated interest in such areas of the assistance available under this subchapter by virtue of the designation of such areas.

42 U.S.C. § 254*l*

National Health Service Corps Scholarship Program

(a) Establishment

The Secretary shall establish the National Health Service Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to § 254d(a)(2) of this title--

(1) an adequate supply of physicians, dentists, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals.

(b) Eligibility; application; written contract

To be eligible to participate in the Scholarship Program, an individual must--

(1) be accepted for enrollment, or be enrolled, as full-time student (A) in an accredited (as determined by the Secretary) educational institution in a State and (B) in a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps;

(3) submit an application to participate in the Scholarship Program; and

(4) sign and submit to the Secretary, at the time of submittal of such application, a written contract (described in subsection (f) of this section) to accept payment of a scholarship and to serve (in accordance with this subpart) for the applicable period of obligated service in a health professional shortage area.

(c) Review and evaluation of information and forms by prospective applicant

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Secretary shall include with such forms--

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under § 254o of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under § 254n of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Scholarship Program and service in the Corps, including a statement of all factors considered in approving applications for participation in the

Program and in making assignments for participants in the Program.

(2) The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Scholarship Program. The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to insure that such individuals have adequate time to carefully review and evaluate such forms and information.

(3)(A) The Secretary shall distribute to health professions schools materials providing information on the Scholarship Program and shall encourage the schools to

disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Scholarship Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Scholarship Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Scholarship Program are assigned under § 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to provide primary health services, after the period of obligated service under the Scholarship Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to § 254f-1 of this title, in providing contracts under the Scholarship Program--

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services; and

(B) may consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Scholarship Program, the Secretary shall give priority--

(A) first, to any application for such a contract submitted by an individual who has previously received a scholarship under this section or under § 294z of this title;

(B) second, to any application for such a contract submitted by an individual who has characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) third, subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Commencement of participation in Scholarship Program; notice

(1) An individual becomes a participant in the Scholarship Program only upon the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.

(2) The Secretary shall provide written notice to an individual promptly upon the Secretary's approving, under paragraph (1), of the individual's participation in the Scholarship Program.

(f) Written contract; contents

The written contract (referred to in this subpart) between the Secretary and an individual shall contain--

(1) an agreement that--

(A) subject to paragraph (2), the Secretary agrees (i) to provide the individual with a scholarship (described in subsection (g) of this section) in each such school year or years for a period of years (not to exceed four school years) determined by the individual is pursuing a course of study described in subsection (b)(1)(B) of this section, and (ii) to accept (subject to the availability of appropriated funds for carrying out § 254d through § 254h and § 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (2), the individual agrees--

(i) to accept provision of such a scholarship to the individual;

(ii) to maintain enrollment in a course of study described in subsection (b)(1)(B) of this section until the individual completes the course of study;

(iii) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study); and

(iv) to serve for a time period (hereinafter in the subpart referred to as the "period of obligated serve") equal to--

(I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program, or

(II) two years,

whichever is greater, as a provider of primary health services in a health professional shortage area (designated under § 254e of this title) to which he is assigned by the Secretary as a member of the Corps, or as otherwise provided in this subpart;

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this

subpart and to carry out the purposes of § 254d through § 254h and § 254j and § 254k of this title;

(3) a statement of the damages to which the United States is entitled, under § 254o of this title, for the individual's breach of the contract; and

(4) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this subpart.

(g) Scholarship provisions; contract with educational institution; increase in monthly stipend

(1) A scholarship provided to a student for a school year under a written contract under the Scholarship Program shall consist of--

(A) payment to, or (in accordance with paragraph (2)) on behalf of, the student of the amount (except as provided in § 292k of this title) of--

(i) the tuition of the student in such school year; and

(ii) all other reasonable educational expenses, including fees, books and laboratory expenses, incurred by the student in such school year; and

(B) payment to the student of a stipend of $400 per month (adjusted in accordance with paragraph (3)) for each of the 12 consecutive months beginning with the first month of such school year.

(2) The Secretary may contract with an educational institution, in which a participant in the Scholarship Program is enrolled, for the payment to the educational institution of the amounts of

tuition and other reasonable educational expenses described in paragraph (1)(A). Payment to such an educational institution may be made without regard to § 3324(a) and (b) of Title 31.

(3) The amount of the monthly stipend, specified in paragraph (1)(B) and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (under § 5303 of Title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the

fiscal year in which such school year ends.

(h) Employment ceiling of Department unaffected

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department.

(i) Annual report to Congress; contents

Not later than March 1 of each year, the Secretary shall submit to the Congress a report providing, with respect to the preceding fiscal year--

(1) the number, and type of health profession training, of students receiving scholarships under the Scholarship Program;

(2) the educational institutions at which such students are receiving their training;

(3) the number of applications filed under this section in the school year beginning in such year and in prior school years;

(4) the amount of scholarship payments made for each of tuition, stipends, and other expenses, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years;

(5)(A) the number, and type of health professions training, of individuals who have breached the contract under

subsection (f) of this section through any of the actions specified in subsection (a) or (b) of § 254o of this title; and

(B) with respect to such individuals--

(i) the educational institutions with respect to which payments have been made or were to be made under the contract;

(ii) the amounts for which the individuals are liable to the United States under § 254o of this title;

(iii) the extent of payment by the individuals of such amounts; and

(iv) if known, the basis for the decision of the individuals to breach the contract under subsection (f) of this section; and

(6) the effectiveness of the Secretary in recruiting health professionals to participate in the Scholarship Program, and in encouraging and assisting such professionals with respect to providing primary health services to health professional shortage areas after the completion of the period of obligated service under such Program.

42 U.S.C. § 254m

Obligated service under contract

(a) Service in full-time clinical practice

Except as provided in § 254n of this title, each individual who has entered into a written contract with the Secretary under § 254*l* or 254*l*-1 of this title shall provide service in the full-time clinical practice of such individual's profession as a member of the Corps for the period of obligated service provided in such contract.

(b) Notice to individual; information for informed decision; eligibility; notice to Secretary; qualification and appointment as commissioned officer; appointment as civilian member; designation of non-United States employee as member; deferment of obligated service.

(1) If an individual is required under subsection (a) of this section to provide service as specified in section 254*l*(f)(1)(B)(iv) or 254*l*-1(f)(1)(B)(iv) of this title (hereinafter in this subsection referred to as "obligated service"), the Secretary shall, not later than ninety days before the date described in paragraph (5), determine if the individual shall provide such service--

(A) as a member of the Corps who is a commissioned officer in the Regular or Reserve Corps of the Service or who is a civilian employee of the United States, or

(B) as a member of the Corps who is not such an officer or employee,

and shall notify such individual of such determination.

(2) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is a commissioned officer in the Service or a civilian employee of the United States, the Secretary shall, not later than sixty days before the date described in paragraph (5), provide such individual with sufficient information regarding the advantages and disadvantages of service as such a commissioned officer or civilian employee to enable the individual to make a decision on an informed basis. To be eligible to provide obligated service as a commissioned officer in the Service, an individual shall notify the Secretary, not later than thirty days before the date described in paragraph (5), of the individual's desire to provide such service as such an officer. If an

individual qualifies for an appointment as such as officer, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint the individual as a commissioned officer of the Regular or Reserve Corps of the Service and shall designate the individual as a member of the Corps.

(3) If an individual provided notice by the Secretary under paragraph (2) does not qualify for appointment as a commissioned officer in the Service, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint such individual as a civilian employee of the United States and designate the individual as a member of the Corps.

(4) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is not an employee of the United States, the Secretary shall, as soon as possible after the date described in paragraph (5), designate such individual as a member of the Corps to provide such service.

(5)(A) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, except that--

(i) at the request of such an individual with whom the Secretary has entered into a contract under § 2541 of this title prior to October 1, 1985, the Secretary shall defer such date until the end of the period of time (not to exceed the number of years specified in subparagraph (B) or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training; and

(ii) at the request of such an individual with whom the Secretary has entered into a contract under § 2541 of this title on or after October 1, 1985, the Secretary may defer such date in accordance with clause (i).

(B)(i) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, or dentistry, the number of years referred to in subparagraph (A)(i) shall be 3 years.

(ii) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of veterinary medicine, optometry, podiatry, or pharmacy, the number of years referred to in subparagraph (A)(i) shall be 1 year.

(C) No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

(D) In the case of the Scholarship Program, with respect to an individual receiving a degree from an institution

other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the academic training of the individual leading to such degree.

(E) In the case of the Loan Repayment Program, if an individual is required to provide obligated service under such Program, the date referred to in paragraphs (1) through (4)--

(i) shall be the date determined under subparagraph (A), (B), or (D) in the case of an individual who is enrolled in the final year of a course of study;

(ii) shall, in the case of an individual who is enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession, be the date the

individual completes such training program; and

(iii) shall, in the case of an individual who has a degree in medicine, dentistry, or other health profession and who has completed graduate training, be the date the individual enters into an agreement with the Secretary under § 254*l*-1 of this title.

(c) Obligated service period; commencement

An individual shall be considered to have begun serving a period of obligated service--

(1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps under

subsection (b)(3) or (b)(4) of this section, or

(2) in the case of an individual who has entered into an agreement with the Secretary under § 254n of this title, on the date specified in such agreement, whichever is earlier.

(d) Assignment of personnel

The Secretary shall assign individuals performing obligated service in accordance with a written contract under the Scholarship Program to health professional shortage areas in accordance with § 254d through § 254h and § 254j and § 254k of this title. If the Secretary determines that there is no need in a health professional shortage area (designated under § 254e of this title)

for a member of the profession in which an individual is obligated to provide service under a written contract and if such individual is an officer in the Service or a civilian employee of the United States, the Secretary may detail such individual to serve his period of obligated service as a full-time member of such profession in such unit of the Department as the Secretary may determine.

(e) Service under National Research Service Award program; credits against obligated service time

Notwithstanding any other provision of this subchapter, service of an individual under a National Research Service Award awarded under subparagraph (A) or (B) of § 288(a)(1) of this title

shall be counted against the period of obligated service which the individual is required to perform under the Scholarship Program or under § 234 of this title as in effect on September 30, 1977.

42 U.S.C. § 254o

Breach of scholarship contract or loan repayment contract

(a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment

(1) An individual who has entered into a written contract with the Secretary under § 254*l* of this title and who--

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B) is dismissed from such educational institution for disciplinary reasons,

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or

(D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract, in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under § 254*l*-1 of this title and who--

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under § 254*l*-1(b)(1)(B)(ii)

of this title, in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting agencies

(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section or § 254p(d) of this title) either to begin such individual's service obligation under § 254l of this title in accordance with § 254m or § 254n of this

title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A=30\ \frac{(t-s)}{(\ t\ )}$$

in which "A" is the amount the United States is entitled to recover , "0" is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months

of such period served by him in accordance with § 254m of this title or a written agreement under § 254n of this title.

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) of this section shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to § 1395ccc of this title.

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages--

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. § 3718 of Title 31 shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit

reporting agencies information relating to damages of more than $100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.

(2) If an individual is released under § 254n of this title from a service obligation under § 234 of this title (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under § 254n of this title, subsection (f) of such § 234 of this title shall apply to such individual in lieu of paragraph (1) of this subsection.

(c) Failure to commence or complete service obligations for other reasons;

determination of liability; payment to United States; waiver of recovery for extreme hardship or good cause shown

(1) If (for any reason not specified in subsection (a) of this section or § 254p(d) of this title) an individual breaches the written contract of the individual under § 254*l*-1 of this title by failing either to begin such individual's service obligation in accordance with § 254m or § 254n of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of--

(A) in the case of a contract for a 2-year period of obligated service--

(i) the total of the amounts paid by the United States under § 2541-1(g)(2) of this title on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty;

(B) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs before the end of the first 2 years of such period--

(i) the total of the amounts paid by the United States under § 2541-1(g)(2) of this title on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty; and

(C) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs after the first 2 years of such period--

(i) the total of the amounts paid by the United States under § 2541-1(g)(2) of this title on behalf of the individual for any period of obligated service not served; and

(ii) if the individual breaching the contract failed to give the Secretary notice, that the individual intends to take action which constitutes a breach of the contract, at least 1 year (or such shorter period of time as the Secretary determines is adequate for finding a replacement) prior to the breach, $10,000.

(2) For purposes of paragraph (1), the term "unserved obligation penalty" means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B) of this section.

(d) Cancellation of obligation upon death of individual; waiver or suspension of obligation for impossibility, hardship, or unconsciousability; release of debt by discharge in bankruptcy, time limitations

(1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible

or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3)(A) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under Title 11 only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(B)(i) Subparagraph (A) shall apply to any financial obligation of an individual under the provision of law

specified in clause (ii) to the same extent and in the same manner as such subparagraph applies to any obligation of an individual under the Scholarship or Loan Repayment Program (or contract thereunder) for payment of damages.

(ii) The provision of law referred to in clause (i) is subsection (f) of § 234 of this title, as in effect prior to the repeal of such section by § 408(b)(1) of Public Law 94-484.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**3:92CV390**
	)	
JAMES J. LEDWITH, JR., M.D.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF

JAMES J. LEDWITH, JR., M.D.

James J. Ledwith, Jr., having first been duly sworn in accordance with law, deposed and stated as follows:

1. My name is James J. Ledwith, Jr., and I reside at Tappahannock (Essex, County) Virginia.

2. I am a Medical Doctor specializing in and maintaining a Family Practice in

Tappahannock, Virginia. By the term "Family Practice" is meant "family-oriented" comprehensive medical services in outpatient, hospital, nursing facilities and home settings for patients of all ages, children through the elderly. I am Board certified in my specialty.

3. I have maintained my practice in Tappahannock since January of 1989, having previously practiced in Aylett (King William County) Virginia since 1986. I regularly see patients there and at the Riverside Tappahannock Hospital (where I am on the active Medical staff which I serve as President) from as far away as 50 miles. The area which is served is very rural and not very wealthy. I regularly must write off as much as 30% of my total billings as uncollectible.

4. There are 4 doctors (including myself) specializing in a Family Practice here now, 2 of whom are associates of mine whom I recruited to come to practice with me. The fourth was recruited by the hospital with my active assistance. By practicing with me my associates have fulfilled their service obligations to the State of Virginia for scholarship aid which they received under a state program similar to the NHSC federal program. That state program is referred to as The Virginia Health Scholarship Program.

5. When I opened my practice in Tappahannock there were 6 primary care physicians practicing in the area, none of whom were family practitioners or certified by any medical board.

6. I attended medical school at the Medical College of Virginia ("MCV") in Richmond during the years 1979 to 1983.

7. I was first recruited for the National Health Service Scholarship program in 1980 by literature mailed to me by the National Health Service ("NHSC").

8. Prior to accepting the scholarship I spoke to, among others, Dawn Mueller, M.D. at MCV who I understood to be the NHSC's on campus advisor.

9. Prior to accepting the scholarship aid I also attended an NHSC recruiting session at MCV where various individuals employed by the NHSC spoke about the program.

10. At that time I was engaged to the woman who later became my wife, Beth Faber, and we were concerned about the course of our future.

11. Since the day that I had decided that I wanted to be a doctor I also knew that I wanted to do family practice in a rural community where, because of the lack of adequate medical personnel, I could feel that I was needed and that I was doing something worthwhile with my life.

12. The program which was offered by the NHSC seemed ideal for me since its purpose was to provide doctors for the type of community that I wanted to serve. The only question which I had was whether the program could be expected to employ me in an area where my future wife could also use her education and training. This was a considerable concern since the dental licensure procedure is considerably different than that for a medical doctor. A medical doctor once licensed to practice is generally eligible to be licensed in

all states. An orthodontist or dentist, on the other hand, must not only pass a written examination but also a clinical one. The latter requires the presentation of several of your patients on whom you will perform some task. When the dentist is examined, it is only for a state or region. There is no national board examination as there is in medicine. Therefore, Beth and I knew that by reason of her profession we would be limited geographically to the states accepting her board examinations. Taking those exams in Virginia meant that practicality would limit us to the east and the south. We knew that the west and most of the midwest would be unavailable to us.

13. We discussed these concerns with the NHSC recruiters with whom we met and were specifically told that Beth's professional

needs would be given every consideration in the selection of a site for me to serve my obligation and, that I would not be involuntarily placed into the Indian Health Service ("IHS") which we conceived as being principally located in the west. The NHSC's literature which I received at that time also explained that spouses' needs would be given consideration. **Exhibit 1**

14. At the same time that I was considering the NHSC Scholarship I also had guaranteed student loans available to me had I felt that the NHSC program was not right for me.

15. Based upon the assurances which I received I decided to take the NHSC Scholarship, and did so for the School years 1980-81 and 1981-82. I signed a contract with the NHSC. **Exhibit 2**

16. Immediately upon the completion of my studies at MCV I went to the Toledo Hospital in Toledo, Ohio, for three years of Residency in my chosen specialty, Family Practice. I completed that in June of 1986.

17. During my Residency training I did a two week period of training called a "Preceptorship" with A.W. Lewis, M.D. at Aylett, Virginia (located approximately 20 miles from my current location) and with Bruce Bucher, M.D. of Tappahannock. At that time King William County, Virginia where Aylett is located was on the NHSC's list of Health Manpower Shortage Areas ("HMSA"). In fact, I arranged the preceptorship there because the neighboring clinic with which Dr. Lewis shared his "call" was on the original list of pre-approved sites for assignment by

the NHSC. **Exhibit 3** I enjoyed the area and the people and I noted that it could provide an opportunity for Beth. I hoped that when I finished my training I might return to fulfill my obligation to the government. I was assured by the staff there that the feelings were mutual. In fact, Dr. Lewis wrote to the NHSC asking that I might fulfill my obligation to the Service in his clinic. **Exhibit 4** As a result of the discovery available in this suit I now find that the NHSC refused Dr. Lewis' request for "political" reasons having nothing to do with the needs of the community or with mine. **Exhibit 5**

18. In July of 1985 I received the list from the NHSC of available opportunities (the so-called High Priority Opportunities List "HPOL") in HMSAs from which I was to make a selection of a particular site and

see if I could "match" my requirements with the needs of one of the sites. The process was to be completed by October 31, 1985. I understood that if I was unable to make a match by that date that I would be allocated to a region. Failing to make a match I would be specifically assigned to a site by the NHSC. Exhibits 1 and 6-11 I further understood that the specific site assignment would be drawn from all then currently unmatched sites, i.e. not just the region to which I had been allocated. Finally, from my discussions with the recruiters and my examination of the literature which they had provided me it was clear that if I was "force-matched" to a specific site I would have the opportunity to accept it, refuse it, or appeal to the Secretary of Health and Human Services for a waiver of my

obligation on the grounds of "extreme hardship".

19. I was unable to make a match i the first phase by October 31, 1985. On December 12, 1985, I was notified that because I was unable to make a match I had been allocated to the Indian Health Service. **Exhibits 12 and 13** I was stunned, **Exhibit 14**, after all the assurances I had been given that I would not be involuntarily allocated to the IHS. Despite the fact that both the statute and my contract provided for the Secretary of HEW's consideration of a request for a waiver of a scholar's obligations, both of my requests for such went ignored. **Exhibits 15 and 16** After reviewing the discovery material provided by the government in this case it is now a little easier to see what happened. Obviously

the NHSC dramatically changed their methods of allocation between the time that I was recruited and signed my contract and the time when I was to enter the service. **Exhibit 17**

20. Despite the setback, I tried to see if we could make the best of it. We attempted to find something on the list which might be workable and made numerous contacts with specific locations, inquiring about the position available for me and also about whether there would be a possibility of employment for my wife. No one was particularly interested in our predicament or very helpful. One IHS clinic director even told my wife that it would be better for her if she simply forgot about her profession and stayed home and "raised babies".

21. We spent a great deal of time looking. There was an opening at the Pine Ridge, South Dakota reservation which we followed up on because we were told at the outset that there was an orthodontic position also available that Beth could fill, and because it was a federal position she needed no further license than that which she had. We made arrangements to go out to see the site and meet with the people only to discover that the orthodontic position was not yet established, that there was a real possibility that it would not be funded, and the clinic was not offering an orthodontic position. **Exhibit 18 and 19**

22. On April 13, 1986, I informed Mr. John Gimon of the NHSC, **Exhibit 20**, that based upon my attempts to find a site at which both Beth and I could practice, earn a

living and thereby pay off some of the many bills we had accumulated while going to school I did not expect that I would be able to fulfill my obligation to the NHSC by making a match in the IHS. (In light of the fact that it now appears that as late as January of 1987 there were 2 NHSC physician positions available in King William County, Virginia, it is difficult to understand why the NHSC refused to assign me and why they were so intransigent.) **Exhibit 21** In any event, we fully expected that the NHSC would take the next step and assign me to a specific location after April 15. I believed that since the assignment pool would be drawn from a wider range than simply the IHS, **Exhibit 19**, that I would be no worse off than I was at that time and that if the NHSC actually assigned me to an IHS site I

would be then able to petition the Secretary of Health and Human Services for a review and, possibly, a "hardship" waiver.

23. That did not happen. Despite my objections that I was not following its own established procedure, **Exhibit 19**, the NHSC informed me that I was considered to be in default of my obligations. My consistent response has been that I am not in default and that I have always stood ready to complete the agreement which I made with them, one which gives proper consideration to my wife's profession and, now, to my commitments to the community which I serve, the kind of community to which the NHSC program was intended to attract me in the first place.

/s/ James J. Ledwith, Jr.

James J. Ledwith, Jr.

Subscribed, sworn and acknowledged before me by James J. Ledwith, Jr., M.D., this 9th day of October, 1992.

(SEAL) /s/ Geneva Arlene Burrell

Notary Public for Richmond County

My commission expires: 2-29-96

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**C.A. No.**
vs.	)	**3:92CV390**
	)	
JAMES J. LEDWITH, JR., M.D.,	)	
	)	
Defendant.	)	

AFFIDAVIT OF

JAMES J. LEDWITH, JR., M.D.

James J. Ledwith, Jr., having first been duly sworn in accordance with law, deposed and stated as follows:

1. My name is James J. Ledwith, Jr., and I reside at Tappahannock (Essex, County) Virginia. I am the Defendant in this case and the same James J. Ledwith, Jr., who

earlier provided an affidavit dated October 9, 1992.

2. In my earlier affidavit I stated:

> "13. We discussed these concerns with the NHSC recruiters with whom we met and were specifically told that Beth's professional needs would be given every consideration in the selection of a site for me to serve my obligation and, that I would not be involuntarily placed into the Indian Health Service ("IHS") which we conceived as being principally located in the west. The NHSC's literature which I received at that time also explained that spouses' needs would be given consideration."

3. I remember very clearly that in 1980 I attended a meeting at MCV where a NHSC Representative came to school to discuss the scholarship program and answer any questions. The meeting was attended by a number of other students as well. At that meeting the NHSC Representative stated in response to my question that since my wife

was also studying to be a health professional that the NHSC, which would be getting two professionals but giving only one scholarship, would make every effort to see that I was assigned to a location where both of us could practice and where both of us might remain after my obligated service was completed. Also at that meeting the NHSC Representative made it very clear that NHSC service would be rendered through Community Health Centers and that the Indian Health Service and the Bureau of Prisons were elective options which could be made available to the students.

4. I have recently discussed the Meeting with Dr. Dawn Mueller who, at the time, was the faculty liaison with the NHSC scholarship program. She informs me that the meeting which I have referred to above

occurred in either March or April of 1980 and that the NHSC Representative who spoke at that meeting was Dr. Kenneth Veits. She also informs me that very recently and in connection with my case she gave Dr. Veits' name to the U.S. Attorney's office.

5. As the record in this case shows (Exhibit 2) I signed the contract which had to accompany my application for a NHSC scholarship on March 23, 1980. I do not have a clear recollection as to whether that was before or after the March-April meeting with Dr. Veits. I am very sure however, that at the time of that meeting if I had already signed the agreement I was still in the period where I could have withdrawn my application without incurring any obligation to the NHSC.

6. On October 9, 1982, I attended the Region III NHSC Scholarship Workshop for

scholarship recipients which was held at the Shoreham Hotel in Washington, D.C. That conference was also intended to inform students about the programs which the NHSC offered. Dr. Veits was one of the speakers and Rae Loen appeared on the program as the Representative of the Indian Health Service. I am sure that at that conference I heard the same thing that I was told in 1980, namely that the Indian Health Service was an elective which might be made available to students and that spouses' needs and requirements would be given every consideration.

/s/ James J. Ledwith, Jr.

James J. Ledwith, Jr.

COMMONWEALTH OF VIRGINIA

COUNTY OF ESSEX, to-wit:

Subscribed, sworn and acknowledged before me by James J. Ledwith, Jr., M.D., this 21st day of October, 1992.

My commission expires: 2/29/96

/s/ Geneva Arlene Burrell

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, a copy of the foregoing to Nicholas S. Altimari, Assistant United States Attorney, Eastern District of Virginia, Main Street Centre, Suite 1800, 600 East Main Street, Richmond, Virginia 23219-2447, this 21st day of October, 1992.

/s/ Wayne L. Emery

Wayne L. Emery, Counsel
VSB 32195

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No.**
	)	**3:92CV390**
JAMES J. LEDWITH, JR., M.D.,	)	
	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

On August 11, 1992, Defendant, Dr. James J. Ledwith, filed and served upon the Plaintiff, United States of America, his First Request for Documents. (Copy attached hereto as Exhibit 1) on September 18, 1992, Plaintiff served its responses (Copy attached hereto as Exhibit 2) upon Defendant and, in accordance with an agreement between Counsel, also sent

Defendant a copy of the documents which it was producing. On September 20, 1992, Defendant sent Plaintiff's counsel a FAX message outlining his belief that the production was inadequate. (Copy attached hereto as Exhibit 3) Subsequently on September 22 Defendant's counsel was able to reach Plaintiff's counsel for a very short discussion of the matter.

This case is currently set for trial by jury on October 28 and discovery is to be terminated by October 10. It involves issues concerning the obligations incurred by Dr. Ledwith pursuant to the National Health Service Scholarship which he received while studying at the Medical College of Virginia in the early 1980's. Principally those issues center about;

1. The Plaintiff's contractual right to assign Dr. Ledwith involuntarily to the Indian Health Service ("IHS");
2. Plaintiff's contractual obligation to consider Dr. Ledwith's wife's profession in choosing a location for the assignment of Dr. Ledwith for the purpose of fulfilling his obligation;
3. Plaintiff's failure to make a good faith effort to properly assign Dr. Ledwith for service; and
4. Plaintiff's failure to follow its own specified procedures before placing Dr. Ledwith in a "default" status.

ARGUMENT

Defendant's concern with the response of the Plaintiff is fourfold;

FIRST, Plaintiff's objection are untimely;

SECOND, Plaintiff's claim of privilege is unsupported;

THIRD, It is incredible that a thorough search of the files of the plaintiff would produce so little internal paper; and

FOURTH, The objections which are made are not well founded.

I. PLAINTIFF'S OBJECTIONS ARE UNTIMELY

Rule 11.1(D) of the Local rules for the Eastern District of Virginia requires that a party which has an objection to a request for documents file its objections within 15 days of the service of the request. The purpose of that rule is to assist the Court in administering its

docket by assuring the court that cases will proceed through the system expeditiously. Counsel for any party has the right to depend upon the efficacy of that rule when planning its discovery. There are no different rules, nor should there be, when one of the parties is the United States.

In the present case the Request for Documents was served upon the Plaintiff by mail on August 11. Fifteen days from that date was August 26. Even if 3 days are added because of Defendant's use of the mails for service, Plaintiff's objections were still untimely when they were sent to Defendant on September 18 and, for that reason alone, Plaintiff's objections should be overruled and Plaintiff required to promptly respond.

II. PLAINTIFF'S CLAIM OF PRIVILEGE IS UNSUPPORTED

The instructions which Defendant included with its Request for Documents stated;

> "If any documents otherwise required to be produced by this Request are withheld, Plaintiff shall identify each document by date, author, recipient and subject matter contained therein, and state the reason for withholding such from production.

The reason for the inclusion of that instruction must be clear since it is the same format generally required of one requesting an in camera inspection. Defendant wanted to avoid what has evidently occurred here, a "scatter-gun" claim of privilege.

Plaintiff has interposed an "attorney-client" privilege to Requests

4A,D-F; 6; 8; 9; 10; 11; and 14. However, Plaintiff has not even attempted, either in its responses or in the abrupt conversation of counsel, to show any basis for the application of the privilege to any document. Neither has the Plaintiff shown that it has taken any pains to examine the individual documents upon which the privilege is claimed to see if some parts of each or any of them can be disclosed without jeopardizing any privilege.

The Plaintiff's claim of privilege is unwarranted and, coming as it does at this stage of the proceedings, it is dilatory.

III. THERE IS REASON TO SUSPECT THAT PLAINTIFF'S SEARCH FOR DOCUMENTS WAS LESS THAN THOROUGH

Since at least mid-1986 the Plaintiff has been corresponding with the Defendant, claiming that it was preparing to place him in "default status", threatening and then actually turning over its files to a collection agency and the IRS, threatening litigation and then actually bringing suit. Numerous agencies of the United States have been directly involved including the Indian Health Service, the National Health Service, numerous and sundry branches of the Department of Health and Human services and the IRS. Despite that, in the more than 4 inches of paper which the Plaintiff turned over to Defendant there were less than a dozen

internal documents relating to this matter. The overwhelming majority of what the government produced was correspondence **with the defendant, Dr. Ledwith**.

It is incredible that a bureaucracy such as the federal government which daily churns paper could have produced and maintained so little in this case. We believe that what has happened is that, not unlike other gargantuan clients, the people who were tasked with the job of retrieving the documents did not realize the importance and the necessity of what they were being asked to do. The following is illustrative. Request 7 D asks:

> "Please identify and provide copies of each and every, all and any documents which refer, reference and/or pertain to the open positions for scholarship recipients between April 15, 1985, and April 1, 1986, and in connection therewith please also

> identify and provide copies of each and every, all and any documents which refer, reference and/or pertain to:
>
> . . .
>
> D. The personnel who participated in making such assignments during the period between April 15, 1985 and April 1, 1986;"

The response which the Plaintiff makes is that "There are no such documents." That is highly improbable if not actually impossible.

We ask, that at the very least, counsel for the Plaintiff be required to place a representation in this record that he is personally satisfied that every effort has been made to find every department of every agency who might have a document of the type which has been requested and that a thorough search of those locations has been made for responsive documents.

IV. PLAINTIFF'S OBJECTIONS ARE NOT WELL FOUNDED

In addition to the foregoing, the objections which the Plaintiff now makes are without any basis.

In its Request number 1 the Defendant asked:

> "Please identify and provide copies of each and every, all and any literature which was supplied by you and/or published and available to you to supply persons authorized by you to recruit and/or advise prospective scholarship applicants during the years 1975 through 1985 for their use, distribution, assistance and/or guidance in carrying out such functions."

The Plaintiff has objected to providing anything other than the material pertinent to the year for which Dr. Ledwith first applied for a scholarship, 1980-81. The other years are said to be "irrelevant".

But the government here, as it does persistently throughout its objections, confuses evidence with discovery material. Rule 26(b)(1) FRCP provides that "It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The facts in this case will show that the contract which the Defendant had with the Plaintiff provided that he would not be involuntarily assigned to the Indian Health Service ("IHS") and that every reasonable consideration would be given to his wife's professional plans in the selection of a servicing location for Defendant. Furthermore, it will be shown that the literature which he received prior to signing the agreement and what he

was told by his recruiter defined those obligations. Finally, the evidence will establish that the recruiter was authorized to so define those obligations because that had been the policy of the government through many years. Defendant, therefore, must be able to show what he believes the documents which the Plaintiff is withholding will reveal, namely that the policy which he perceived from the literature and was explained by the recruiter was not aberrational but was, in fact, the consistent policy used and applied by the Plaintiff for many years.

Defendant's Request number 7 asked:

> "Please identify and provide copies of each and every, all and any documents which refer, reference and/or pertain to the open positions for scholarship recipients between April 15, 1985 and April 1, 1986, and in connection therewith please also identify and provide copies of each and every, all and any documents

which refer, reference and/or pertain to:

A. Criteria used generally to assign "unmatched scholarship recipients to available sites after the period for "matching" in any class year had expired;
B. The criteria used and/or to be used for such during the period between April 15, 1985 and April 1, 1986;
C. The pool of unmatched recipients during the period between April 15, 1985 and April 1, 1986, and the assignments made from that pool;
D. The personnel who participated in making such assignments during the period between April 15, 1985 and April 1, 1986;"

Plaintiff objects to providing anything between April 15, 1985 and June 30, 1985, because it claims that the "matching process" was not available to Dr. Ledwith at that time.[1]

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[1] Plaintiff also objects to providing any information for openings other than those for the medical specialty for which Dr. Ledwith was trained "Family Practice". Defendant agrees and so limits request.

It is the position of Dr. Ledwith that for various reasons, many of which are still unknown to him, he was not treated fairly in the "matching process" when compared not only to what he was contractually promised but also to other scholars. It is further his position that if the data maintained by the government is divulged to him, it will establish that and thus prove that the government's action vis a vis him has been not only arbitrary and capricious but also in violation of its agreement with him. Going back to April 15 it is believed will reveal what the Plaintiff was doing to scholars in the matching period immediately preceding Dr. Ledwith's and provide some further basis for comparison.

Plaintiff also objects to subpart C of this request on the basis that it would

take "an estimated 200 staff hours to manually retrieve, review, copy and redact, if necessary, the requested documents."[2] It is understandable why the Plaintiff does not wish to divulge the information which Defendant is requesting; it would make Plaintiff vulnerable to the claim of Dr. Ledwith that he was treated in a manner which not only violated his contract but his basic right to fair treatment at the hands of the government. However, it would be unconscionable for the government to be permitted to remain in sole and exclusive control and

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[2] It appears from the other objection of the Plaintiff to this request that the redaction which may be necessary is the elimination of the social security numbers from the papers. Defendant has no need for such and thus agrees that they could be redacted. Elimination of that requirement, however, could be met by a protective order which limited the people viewing the documents to Defendant and his counsel and the use of them to defense of this case. 5 USCA Sec. 552a (b)(11).

possession of a vital element of a defense to its suit and still be permitted to go forward. If in fact the hours which are claimed to be necessary to respond to this request are not inflated[3] quite obviously a significant number of them can be eliminated by making the documents available to Defendant at the source and letter him determine which of them need to be copied.

In much the same vein is the Plaintiff's response to Request numbers 12 and 13. Those Requests asked:

> "12. Please identify and provide copies of each and every, all and any documents which refer, reference and/or pertain to claims and/or allegations mae by scholarship recipients and/or those representing them that the National Health service Scholarship Contract which they

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[3] The hours claimed must be highly suspect to the extent, at least, that it is claimed that the material can only be manually retrieved.

signed was ambiguous with regards to the obligations which they imposed.

13. Please identify and provide copies of each and every, all and any documents which refer, reference and/or pertain to claims and/or allegations made by scholarship recipients and/or those representing them that they were told by representatives of the Plaintiff prior to their signing the National Health Service Scholarship contract that they would not be in voluntarily assigned to Indian Health Service."

Their obvious purpose was to elicit information which would enable Defendant to discover and to contact other individuals who, like himself, had the same form contract explained to them to be consistent with the prevailing policy of no involuntary assignment to the IHS and deference in the assignment procedure to a scholar's wife's profession.

In this case the Plaintiff says that it would take an estimated 6,000 staff hours to "manually" retrieve the documents and thereafter to "review, copy, and redact" them. However, these are all documents which are important to issues which are central to Dr. Ledwith's defense. It would be unconscionable to deny him access to them, just as it is unseemly to suggest that he should not have them because it is inconvenient for the government.

Request number 18 asked:

> "18. Please identify and provide copies of each and every, all and any documents kept and/or generated by the Internal Revenue Service during the period 1981 to the present date which refer, reference and/or pertain to Dr. James J. Ledwith and/or his wife Dr. Beth F. Ledwith."

The government responds that anything other than the referral of the claim from

the Department of Health and Human services to the IRS is irrelevant to this proceeding. But again, the objection is any evidentiary one, not suitable to a discovery request.

The Defendant has for almost 8 years undergone punishment inflicted by the Plaintiff which included not only the referral of the matter to a collection agency, but also to the IRS. There is some reason to suspect that the referral to the IRS somehow also included his wife's separate professional returns. Surely Defendant must now be able to discover where and as he can what the government's punishing purpose has been and if it is directed towards suppressing a defense which may make the government vulnerable to the suits of other scholars who are similarly situated to Dr. Ledwith.

WHEREFORE, FOR ALL THE FOREGOING REASONS, Defendant prays that this Court will overrule the objections of the Plaintiff to Defendant's First Request for Production of Documents and compel Plaintiff to fully respond.

RESPECTFULLY SUBMITTED,

/s/ Wayne L. Emery
By _____
Wayne L. Emery, Counsel
VSB 32195

Wilkins, Davison & Emery
610 West Richmond Road
P.O. Box 669
Warsaw, Virginia 22572
(804) 333-3300

CERTIFICATION

Counsel for Defendant certifies that he has made a good faith effort to resolve the discovery matters at issue herein.

/s/ Wayne L. Emery

By _____
Wayne L. Emery, Counsel

Wilkins, Davison & Emery
610 West Richmond Road
P.O. Box 669
Warsaw, Virginia 22572
(804) 333-3300

CERTIFICATE OF SERVICE

I hereby certify that I have mailed, postage prepaid, a copy of the foregoing to Nicholas S. Altimari, Esquire, Assistant United States Attorney, Suite 1800, Main Street Centre, 600 E. Main Street, Richmond, Virginia 23219, this 29th day of September, 1992.

By /s/ Wayne L. Emery
Wayne L. Emery, Counsel

U.S. DEPARTMENT OF

HEALTH, EDUCATION AND WELFARE

PUBLIC HEALTH SERVICE

Health Resources Administration

Bureau of Health Manpower

NATIONAL HEALTH SERVICE CORPS

SCHOLARSHIP PROGRAM CONTRACT

Section 751 of the Public Health Service Act (42 U.S.C. 294t) establishes the National Health Service Corps Scholarship Program ("Scholarship Program") and authorizes the Secretary of Health, Education, and Welfare ("Secretary") to provide applicants selected to be participants in the Scholarship Program with scholarship awards. In return for awards, applicants must agree to provide health services in a manner determined by the Secretary for a period of obligated service equal to one year for each year of

scholarship award received, or two years, whichever is greater. The regulations implementing the Scholarship Program are set forth in Title 42, Code of Federal Regulations, Part 62.

Section 751 requires applicants to submit with their applications a signed contract stating the terms and conditions of participation in the Scholarship Program. The Secretary shall sign only those contracts submitted by applicants who are selected for participation. The terms and conditions of the contract are set forth below.

Section A - Obligations of the Secretary

Subject to the availability of funds appropriated by the Congress of the United

States for the Scholarship Program and the National Health Service Corps ("Corps"), the Secretary agrees to:

1. Provide the undersigned applicant ("applicant") with a scholarship award for the school year 1980-81 during which the applicant:

a. is enrolled, or is accepted for enrollment, as a full-time student in an accredited (as determined by the Secretary) educational institution in one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands, and

b. is pursuing a course of study leading to a degree in medicine, osteopathy, dentistry, or other health

profession which has been approved by the Secretary for participation in the Scholarship Program.

The scholarship award consists of tuition, an amount for all other reasonable educational expenses in cured by the student, and a monthly stipend for the 12-month period beginning with the first month of each school year in which the applicant is a participant in the Scholarship Program.

2. Utilize the applicant to provide health services in accordance with Section B(4) of this contract.

3. Defer performance of an applicant's period of obligated service if the applicant (1) receives a degree from a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry or pharmacy, and (2) requests a deferment

of this period to complete internship, residency or advanced clinical training.

The period of deferment may not exceed (1) three years for applicants receiving degrees from schools of medicine, osteopathy or dentistry, or (2) one year for applicants receiving degrees from schools of veterinary medicine, optometry, podiatry or pharmacy. The Secretary may, however, extend this period of deferment if the Secretary determines that the extension is consistent with the needs of the Corps.

Section B - Obligations of the Applicant

The applicant agrees to:

1. Accept the scholarship award provided by the Secretary under section A(1) of this contract for the school year 1980-81.

2. Maintain full-time enrollment until completion of the course of study for which the scholarship award is provided.

3. Maintain an acceptable level of academic standing while enrolled in the course of study for which the scholarship award is provided.

4. Serve his or her period of obligated service by providing health services, as determined by the Secretary:

a. In the full-time clinical practice of his or her health profession as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or as a civilian member of the Corps in a health manpower shortage area designated under Section 332 of the Public Health Service Act ("Act"); or

b. In a unit of the Department of Health, Education, and Welfare designated by the Secretary, if there is no need in a health manpower shortage area for a Corps member of the profession in which the applicant is obligated to provide health services under this contract; or

c. In the full-time private clinical practice of his or her health profession as set forth under Section 753 of the Act in a health manpower shortage area which has : (1) a priority for the assignment of Corps members under Section 333(c) of the Act, and (2) a sufficient financial base to provide the applicant with an income not less than the income of Corps members.

5. Serve one year of obligated service for each year the scholarship award is provided, with a minimum obligation of 2 years.

6. Comply with the provisions of Title 42, Code of Federal Regulations, Part 62.

Section C - Breach of Scholarship Contract

If the applicant:

1. Fails to accept payment or instructs the educational institution to which scholarship payments are to be made not to accept payments under this contract, the applicant (other than an applicant under paragraph 2 of this section) shall, in addition to the service or other obligations incurred under this contract, pay to the United States the sum of $1,500 as liquidated damages. Payment of this amount must be made within 30 days of the date on which the participant fails to accept payment of scholarship award or

instructs the school not to accept payment.

2. Fails to maintain an acceptable level of academic standing in the course of study for which the scholarship award is provided, or voluntarily terminates academic training before the completion of such training, or is dismissed from the educational institution for disciplinary reasons, the applicant shall, instead of performing the service obligation incurred under this contract, repay to the United States all funds paid to the applicant and to the education institution under this contract. Payment of this amount must be made within 2 years of the date the participant becomes liable to make payment under this paragraph.

3. Fails to begin or complete the period of obligated service incurred under this contract for any reason other than those in paragraph 2 of this section, the United States shall be entitled to recover an amount equal to three times the scholarship funds awarded, plus interest, as determined by the formula

$$A=30\left(\frac{t-s}{t}\right)$$

in which:

'A' is the amount the United States is entitled to recover,

'0' is the sum of the amounts paid to or on behalf of the applicant and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

't' is the total number of months in the applicant's period of obligated service, and

's' is the number of months of such period served by the applicant in accordance with Section 752 of the Act or with a written agreement under Section 753 of the Act.

The amount the United States is entitled to recover shall be paid within one year of the date the Secretary determines that the applicant has failed to begin or complete the period of obligated service.

Section D - Creditability of Graduate Training Toward the Period of Obligated Service

1. Except as provided in paragraph 2 of this section, no period of internship,

residency, or other advanced clinical training will be counted toward satisfying the period of obligated service incurred under this contract.

2. Applicants who received funds under the Public Health and National Health Service Corps Scholarship Training Program (Section 225 of the Act as in effect September 30, 1977) for any school year beginning before October 12, 1976, will receive a credit toward the period of obligated service for any period of internship or residency served in a Public Health Service or National Health Service Corps facility. Applicants who received funds for the first time under the Public Health and National Health Service Corps Scholarship Training Program as in effect September 30, 1977, for the school year 1977-78 will receive credit toward the

period of obligated service for only one year of internship or residency served in a Public Health Service or National Health Service Corps facility.

Section E - Cancellation, Suspension, and Waiver of Obligation

1. Any service or payment obligation incurred by the applicant under this contract will be canceled upon the applicant's death.

2. The Secretary may waive or suspend the applicant's service or payment obligation incurred under this contract if:

a. compliance by the applicant with the terms and conditions of this contract is impossible or would involve extreme hardship, and

b. enforcement of such obligation would be unconscionable.

Section F - Contract Extension

1. The applicant may annually request extension of this contract, for a period not to exceed 12 months, if the request is submitted in accordance with procedure established by the Secretary.

2. Subject to the availability of funds appropriated by the Congress of the United States for the Scholarship Program and the Corps, the Secretary shall approve requests for contract extension if:

a. the request does not extend the total period of scholarship award beyond four years, and

b. the applicant is otherwise eligible for continued participation in the Scholarship Program.

The Secretary or his authorized representative must sign this contract before it becomes effective.

/s/ JAMES J. LEDWITH, JR.

Applicant Name (Please Print)

/s/ James J. Ledwith, Jr.

Applicant Signature

3/23/80

Date

/s/ Clifford Allen

Secretary of Health, Education, and Welfare or Authorized Representative

8/02/80

Date

Department of Health and Human Services

Public Health Service

Health Services Administration

Bureau of Health Personnel Development and Service

Extension and Amendment of the National Health Service Corps Scholarship Program Contract --- School Year 1981-82

Consistent with Section F of the initial National Health Service Corps Scholarship Program Contract ("Scholarship Program Contract") entered into under section 751 of the Public Health Service Act (42 U.S.C. 294t) between the undersigned recipient ("recipient") and the Secretary of Health and Human Services, this document extends that contract by awarding the recipient a continuation scholarship award for the 1981-82 school year. The

amount of this continuation award is determined in accordance with Section (A)(1) of the recipient's Scholarship Program Contract, and all the provisions of that contract remain in effect with respect to this continuation award.

/s/ James J. Ledwith, Jr.
Recipient

March 17, 1981
Date

/s/ Arthur D. Colby
Secretary of Health and Human Services or Authorized Representative

6/12/81
Date

JAMES JOSEPH LEDWITH JR.
2609 PARK AVENUE
#5
RICHMOND, VA 23220

SSAN:
181-46-3658

DEPARTMENT OF HEALTH & HUMAN SERVICES

BUREAU OF HEALTH CARE DELIVERY

AND ASSISTANCE

Health Resources and

Services Administration

Rockville MD 20857

December 12, 1985

James J. Ledwith, M.D.

2630 Latonia Street

Toledo, Ohio 43606

Dear Dr. Ledwith:

I am pleased to advise you that, now that the Early Decision process has been completed, you have been assigned to the Indian Health Service (IHS) and may now begin the process of identifying a position in which to fulfill your scholarship obligation.

Every effort has been made to assign each individual to the program or area of his or her highest preference. This was not possible in every case, and if you have not been assigned to the region or program which you indicated as your primary choice on your Site Selection Questionnaire (SSQ), please understand that we have attempted to match you where your background, your preferences and the needs of communities requiring National Health Service Corps (NHSC) assistance are most compatible. You should also be aware that, in resolving the differences between individual preference and the needs of the NHSC, we have given priority to the needs of high-priority underserved communities, since the statutory purpose of the NHSC is to redistribute health professionals to areas which have the greatest need and

demand for health professionals and which are unable to recruit and retain such personnel without the assistance of the NHSC.

Your completed SSQ has already been forward to Mr. John Gimon, Acting Chief, Health Manpower Support Branch, IHS, who is responsible for NHSC assignments to the IHS. He will contact you to initiate the matching process.

We feel that the NHSC has an important mission to provide primary health care services to the underserved. You can be assured of a professionally challenging and rewarding experience as you join us in carrying out that mission.

Sincerely yours,

/s/ Kenneth P. Moritsugu, M.D., M.P.H.

Kenneth P. Moritsugu, M.D., M.P.H.

Director,

National Health Service Corps

James J. Ledwith Jr.
2630 Latonia Blvd.
Toledo, OH 43606
181-46-3658

January 3, 1986

Dear Dr. Moritsugu:

I am in receipt of the letter notifying me of my assignment to the Indian Health Service to fulfill my scholarship obligation. I have reviewed the material sent to me by the IHS and I can find no sites which are suitable for me. My wife is an orthodontist and she is not eligible for dental licensure in any of the states listed on the IHS HPOL. This has been confirmed in telephone conversations of December 30 and 31 with a coordinator in the office of John Gimon, Debra Parham in IHS Resource Development and Dr. Gary Gritzbaugh of the IHS Dental Division in

Albuquerque. Mr. Gimon also confirmed that it would be unlikely that the IHS would find work for my wife.

I believe that my Site Selection Questionnaire made it clear that my geographic mobility is limited by the state and regional dental examination system. I also clearly stated my geographic preferences and my lack of enthusiasm for the IHS (arising from the problem we currently face). Throughout the early decision period and since then I have looked for sites where my wife and I could establish ourselves in practice permanently in a rural, needy area. My inquiries into a possible permanent practice at some community health centers directly resulted in rejection. Two centers even wanted to establish a restrictive covenant so I would not remain

in their medically underserved service area after completion of my obligated service. One center actually would have offered me a position if I would have signed a contract to obligate me for two additional years beyond my scholarship commitment! Finally, the two most promising areas in Virginia were removed from the HPOL despite remaining of greater need by the Federal Register HMSA designation than many of the retained sites.

As my current assignment requires review I propose an alternative which will fulfill my needs as well as the health needs of an extensive community. For administrative reasons the King William Community Health Center, serving northern King William and King and Queen Counties in Virginia, was removed from the HPOL in August, 1985.

Management problems were a factor and patient satisfaction and attendance have been falling. During my interview time I spent a good deal of time with the only other physician serving an area of 18 miles radius as well as the staff of local hospital. I propose that I be permitted to fulfill my commitment to the NHSC through the private practice option in this region. I would associate with A.W. Lewis III, M.D. in Aylett, VA, and would be supported in my startup by the Tidewater Memorial Hospital.

The advantages of this arrangement for the community are numerous. By past review Dr. Lewis sees a greater portion of the medically indigent population than subsidized clinic. A joint practice would allow both of us to provide inpatient services to our patients, currently sorely

lacking in the area. This would also enhance the referral base of the local hospital and thus subsequently improve the level of service at Tidewater Memorial. I would have the opportunity to establish my permanent practice from the outset and established documentation requirements would ensure that the medically needy are being served. Because of his research participation Dr. Lewis' office already has a mechanism to collect the demographic data about the practice. He is already preparing to expand his office in hopes of recruiting an associate. The region offers my wife an opportunity to offer full orthodontic services to an area extending beyond six counties where there is no fulltime orthodontist. Most importantly the need for our services is great in this area and two health care

professionals would be permanently established.

This is not a new proposal, however. The hospital administrator, Mr. James Bruer, Dr. Lewis, and community leaders have tried for the past four months to present this to the NHSC for consideration. Until now I thought it best to stay in the background in this process. I did call the Philadelphia regional office and subsequently Dr. Hutchins' office in Rockville last month to inquire about the process. I was treated with bold rudeness and intimidation by a deputy who refused to discuss it or refer me to Dr. Hutchins. Perhaps the NHSC will reconsider a practical, workable, and effective alternative now that it has plunged into this dilemma.

I will continue to work cooperatively with you and your staff in fulfilling my obligation. I believe that I have presented an ideal alternative. Thus far I see no evidence that the NHSC has given any attention to its obligation to me to match me to an appropriate practice site where my wife will be able to pursue her profession. I expect immediate reconsideration of the assignment to the IHS, and an assignment to the proposed PPO in Virginia or at least to another area within the states listed on my site selection questionnaire. A location outside of the states participating in the Northeastern Regional and Southern Regional Board for dentistry is wholly unacceptable. I emphasize my desire for a permanent location due to my wife's profession. No greater NHSC goal could be

achieved than the establishment of two highly skilled health professionals in permanent practice in an area with a great need for both their services.

I trust that we will be able to work cooperatively and that I will receive a prompt, detailed response from you.

Respectfully,

/s/ James J. Ledwith Jr.,M.D.

James J. Ledwith Jr., M.D.

James J. Ledwith Jr., M.D.
2630 Latonia Blvd.
Toledo, OH 43606

January 29, 1986

Kenneth Moritsugu, M.D.
Director, NHSC
Bureau of Health Care Delivery
and Assistance
DHHS
Rockville, MD 20857

Dear Dr. Moritsugu:

I am distressed by the lack of response to my letter of January 3, 1986. I have called your office repeatedly during the past seven days and I have received no response from you or any of your staff. In brief, I have requested a change of my assignment to the Indian Health Service

and serious consideration of a private practice placement in Aylett, Virginia.

The National Health Service Corps has been unresponsive to my needs during this placement cycle and has given me no feedback concerning my inquiries until "final", "unalterable" decisions have been made. I am currently in a situation which would require me to practice in an area where my wife has no ability to pursue her profession. Our other educational loan obligations could not be met with my income from the NHSC or IHS alone. It is absolutely impossible for me to accept the assignment to the Indian Health Service. Because of your lack of responsiveness to my recent inquiries I have no choice but to begin to consider private practice opportunities outside of the NHSC program.

I regret that I am being pressed into this situation by the very short time left before the end of my residency. Please notify me immediately if you have alternative options available to me. If you are unable to provide me with an appropriate practice assignment I respectfully request release from the service obligation resulting from my scholarship. This would allow me to fulfill the spirit of my commitment by practicing in an HMSA where family practice and orthodontic services are needed. If I do not receive some evidence that you are working to resolve this in a positive manner by February 5, 1986, I will formally request release from the Secretary of Health and Human Services. I

understand from NHSC literature that the Secretary must approve such a release.

As I did three weeks ago, I request a prompt reply to my request.

Sincerely,

/s/ James J. Ledwith Jr.,M.D.

James J. Ledwith Jr.,M.D.

DEPARTMENT OF HEALTH & HUMAN SERVICES

BUREAU OF HEALTH CARE DELIVERY

AND ASSISTANCE

Health Resources and

Services Administration

Rockville MD 20857

February 3, 1986

James J. Ledwith, Jr., M.D.

2630 Latonia Boulevard

Toledo, Ohio 43606

Dear Dr. Ledwith:

Thank you for your letter of January 3 concerning your assignment to the Indian Health Service (IHS) to fulfill your National Health Service Corps (NHSC) scholarship service obligation. You request reassignment stating that your wife, who is an orthodontist, can only be licensed in certain States.

While we try to accommodate the needs and preferences of our scholarship recipients as much as possible, the mission of the NHSC is to place its trained health professionals in those sites that have the most significant need and demand for service. This, then, must be the ultimate objective of our placement policies. We fully understand that this policy may result in certain individual assignees' being assigned to areas or programs that do not agree with their preferences. Nevertheless, we have noted that the vast majority of our scholarship obligated physicians have been fully cooperative with our placement policies and are willing to serve their obligations in communities or programs that are inmost need of their services at this time.

Our records reveal that you received the NHSC Placement Package on July 6, 1985. You were strongly encouraged at that time to participate in the Early Decision Alternative (EDA) phase of the placement cycle and match to a site of your choice anywhere in the United States. We also stated in those materials that any scholar who did not match during the EDA, which concluded on October 31, 1985, would be assigned to a region, State or program to find a placement.

Subsequent to the EDA, you were assigned to the IHS to enable you to match to an unfilled family physician vacancy. You were allocated to the IHS because you did not rank high enough on your Site Selection Questionnaire on any of the States you requested in comparison with

other physicians requesting the same States. You were therefore assigned to a high priority program.

In light of the large unmet need for physicians in the IHS, we cannot approve a transfer from the IHS. Please understand, however, that the IHS is under no obligation to employ your wife.

As you have been assigned to the IHS, you should work with Mr. John Gimon to secure a placement by April 15. Failure to so will result in your being assigned to a specific site identified by the NHSC.

We believe you will find your service with the IHS to be personally and professionally rewarding.

Sincerely yours,

/s/ Kenneth P. Moritsugu, M.D.,M.P.H.

Kenneth P. Moritsugu, M.D., M.P.H.

Director

National Health Service Corps

DEPARTMENT OF HEALTH & HUMAN SERVICES

BUREAU OF HEALTH CARE DELIVERY

AND ASSISTANCE

Health Resources and

Services Administration

Rockville MD 20857

February 13, 1986

James J. Ledwith, Jr., M.D.

2630 Latonia Boulevard

Toledo, Ohio 43606

Dear Dr. Ledwith:

Thank you for your letter of January 29 requesting a change in assignment from the Indian Health Service (IHS) to enable you to set up a private practice in Aylett, Virginia, in order to fulfill your National Health Service Corps (NHSC) scholarship obligation. By now you have received my response to your previous

letter. Our letters probably crossed in the mail. Also, Deborah Parham, R.N., of my staff spoke with you on January 23 and discussed your situation with you.

The NHSC is required by statute to assign its scholars to the sites with the greatest need for health services. As I explained to you in my letter of February 3, since you did not secure a match during the Early Decision Alternative, you were assigned to the IHS which needs your services as a family physician. The IHS also has a need for dental services. Part of the Aberdeen Area is without orthodontic services. Your wife could consider initiating a program at Pine Ridge, South Dakota. This would be an excellent professional opportunity for

her. Please continue to work with Mr. John Gimon to secure your placement.

To summarize your current situation, you remain assigned to the IHS and may not fulfill you obligation in Virginia. If you are not matched by April 15, you will be site assigned by the NHSC. If you do not accept assignment, you will be placed in default of your obligation.

If we may be of further assistance, please let us know.

Sincerely yours,

/s/ Kenneth P. Moritsugu, M.D.,M.P.H.

Kenneth P. Moritsugu, M.D., M.P.H.

Director

National Health Service Corps

2630 Latonia Boulevard

Toledo, Ohio 43066

March 13, 1986

Kenneth Moritsugu, M.D.

Director, NHSC

Bureau of Health Care Delivery and

Assistance

DHHS

Rockville, Maryland 20857

Dear Dr. Moritsugu:

Since my last letter of January 29, I have received your two letters; the last dated February 13, 1986 was received on February 24, 1986. In your communications you have reviewed your placement process and refused to change my assignment to the Indian Health Service. You have suggested that I work with Mr. John Gimon and suggested that I pursue an opportunity in

Pine Ridge, South Dakota where my wife could consider initiating an orthodontic program. You also stated that the IHS is under no obligation to employ my wife. Finally you threatened me with default if I do not match by April 15 or subsequently accept a site assignment.

For the past twelve months I have tried to work with the NHSC to find an appropriate site assignment. Despite the complexity of my situation no one in the Corps would discuss placements with me until July 1985. I have already detailed the absurd situations which I encountered pursuing opportunities on the HPOL. Despite my location preference and my wife's profession as an orthodontist with its licensure problems you assigned me to the Indian Health Service. This, of course,

relegated me to only western states, notably absent from my preferences on the site selection questionnaire and where my wife is unable to obtain state dental licensure. I immediately informed you of the problem and within three days had ascertained from Gary Gritzbough, D.D.S., the dental consultant overseeing all IHS dental specialty needs, that no orthodontic positions were available.

Despite having this information you have dragged me through two months of now fruitless discussions with the Aberdeen Area of, IHS and specifically Pine Ridge. Prior to your referral I had independently evaluated Pine Ridge and found no suitable opportunity was available. The Aberdeen area officials, Mr. Bruce Renville and Norman Clark, D.D.S., after your referral,

suggested to me that an orthodontic program was being developed and that they would be interested in hiring my wife to begin it. As time for a site visit drew near and my communications with the local staff increased I learned that such a position is nonexistant and will not be considered for perhaps two years. The only position to be considered at this time would be a general dental position where she could do limited orthodontic work such as that done by general dentists, and probably involving no more than ten percent of her work load. Because of these developments I cancelled our planned site visit scheduled for March 12-13.

I feel defrauded by this turn of events. I feel that I have been intimidated by the

threats of default status to pursue a fictitious position in South Dakota, so you may satisfy you program's physician allocation requirements. I suppose that the April 15 match deadline was to have pressed me into accepting such an unsatisfactory assignment.

I will accept no assignment from the IHS or from the NHSC unless my wife is able to practice orthodontics. Our educational loan obligation makes it impossible to do otherwise. You will note that I have previously informed you that she has taken and passed the Northeast Regional Boards and the Southern Regional Testing Association dental examinations. To be explicit she is therefore eligible for licensure in the following states: Virginia, Kentucky, Tennessee, Arkansas,

Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Michigan, West Virginia, Maryland, and Illinois, and District of Columbia. She is currently licensed in Ohio and Michigan. There are no IHS positions within these states.

You have wasted over two months of valuable time in locating a practice site by insisting on the pursuit of nonexistant opportunities. The establishment of a new medical or orthodontic practice takes three to four months of active preparation and six months of planning. Therefore I must know where I will practice by early April if there is any chance of entering practice in July as scheduled. I have pursued every avenue open to me to meet my

obligation via the early decision alternative and within the Indian Health Service. I have been restricted from information about any other available sites. I am aware of only one needy area where an opportunity for my wife and I exists within a priority HMSA. You have never directly responded to the question raised concerning the needs of the community of King William and King and Queen Counties, Virginia. Why would an area with an HMSA designation greater than many sites on the HPOL be removed from the list as the area loses a physician, putting political and appropriations considerations aside, of course? Do you have a more appropriate site for my wife and I to practice and serve a needy population? I expect a justifying explanation for your refusal to allow me

to enter practice with A.W. Lewis, M.D. in Aylett, Virginia in fulfillment of my NHSC obligation. By the way, he remains receptive to my joining him despite my inability to commit at this time.

Your threat of default status should I not accept an inappropriate assignment is a concern to me. It would appear that you would like to pressure me into serving in an unsuitable location. I have been cautious not to offend in my previous communications but I must now make it clear that you and the NHSC have already breached your contract with me. Your letters indicate that you have not and will not consider my wife's profession and employability in my assignment. There is no way that I can accept an assignment where my wife is unable to practice her

profession. You have since been given adequate opportunity to correct your mistake. My time and patience is running out. I invite you to offer me an appropriate position where I may practice family medicine, and my wife may practice orthodontics. Otherwise, I suggest that you release me from my service obligation.

I am still hopeful that reason will prevail. I look forward to your prompt reply.

Sincerely,

/s/ James J. Ledwith, Jr., M.D.

James J. Ledwith Jr., M.D.

James J. Ledwith Jr., M.D.
2630 Latonia Blvd.
Toledo, OH 43606

April 13, 1986

Mr. John Gimon
Acting Chief, Manpower
Support Branch
Indian Health Service
HRSA/DHHS
Rockville, MD 20857

Dear Mr. Gimon:

I am writing in response to your letter of April 7 which I received today. You apparently have no recall of the extensive discussions that I had with you in January concerning my assignment to the Indian Health Service. Since then I have spoken to other members of your staff as well as personnel in Aberdeen, Pine Ridge, North

Dakota, and New Mexico. After evaluating the opportunities on your list I was unable to find a site where my wife could be able to pursue her profession as an orthodontist. She is not eligible for dental licesure in the listed areas due to the restrictive state and regional dental exam system. We actively pursued an opportunity in Pine Ridge, South Dakota where we were told an orthodontist was needed. However, just prior to our leaving for a site visit last month we learned that only a general dental position would be offered.

As I see no further progress in this matter I must inform you that I do not expect to be able to fulfill my scholarship commitment with the NHSC

through a position in the Indian Health Service.

I am shocked that you would make any recommendation to the NHSC in regard to default in my case as your letter suggests. First, this would hardly seem to be your role. Secondly, I have made every effort possible to resolve our dilemma. Finally, April 15 marks the end of this phase of the assignment process. I trust the NHSC understandsits policy better than you appear to.

Sincerely,

/s/ James J. Ledwith Jr.,M.D.

James J. Ledwith Jr., M.D.

DEPARTMENT OF HEALTH & HUMAN SERVICES

BUREAU OF HEALTH CARE DELIVERY

AND ASSISTANCE

Health Resources and

Services Administration

Rockville MD 20857

April 14, 1986

James J. Ledwith, Jr., M.D.

2630 Latonia Boulevard

Toledo, Ohio 43606

Dear Dr. Ledwith:

Thank you for your letter of March 13 and subsequent telephone call of March 19 in which you stated your unwillingness to match to an Indian Health Service (IHS) site to fulfill your National Health Service Corps (NHSC) service obligation.

You raised several concerns which I will address in turn.

You received the NHSC placement package on July 6, 1985. In that mailing, you were encouraged to secure a match to a site on the approved Health Manpower Shortage Area (HMSA) Placement Opportunity List (HPOL) during the Early Decision Alternative (EDA) period, which was in effect from July 1, 1985 through October 31, 1985. We also stated that those scholarship recipients who did not match during the EDA, at a time when you had the greatest range of choices, would be assigned to a State or program to find a site. November 1, 1985 through April 15, 1986, was clearly identified as the timeframe for securing a match during the second phase of the placement cycle. We further stated

that obligors who did not match to a site prior to April 15 would be assigned to a specific site to fulfill their obligations. Therefore, your assertion that April 15 is a deadline that we imposed to force you into accepting an unsatisfactory assignment, is unfounded.

In considering sites for inclusion on the 1986 HPOL, we took into consideration not only the needs of the shortage areas, but also the likelihood that the areas could recruit health care providers from outside the pool of obligated NHSC scholarship recipients. This was necessary because the demand within designated HMSAs far exceeds the supply of obligated NHSC physicians.

The results of our evaluation led to the identification of practice opportunities for obligated scholars where they would be providing medical care to underserved populations who might not otherwise be able to obtain medical services. We included as many of these priority sites on the HPOL as could be filled by the pool of obligated physicians who are due to begin their service during the summer of 1986. Sites in King William and King and Queen Counties in Virginia were not considered to be of sufficiently high priority to warrant inclusion on the 1986 HPOL.

As we stated in our February 3 letter to you, because you did not match to a site during the EDA you were assigned to the IHS. On page six of the placement

package, we noted that certain areas of the country, particularly Regions I, II and III, were highly competitive and would probably fill during the EDA. We stated that limited vacancies would be available during subsequent phases of the placement cycle in those particular regions. Despite that precaution, you ranked Regions I, II and III as your first choices and States within those regions as your first five preferences. Your assignment to the IHS was made because you did not rank high enough on your Site Selection Questionnaire to be placed in the regions or States that you requested.

After you notified us that your wife was an orthodontist, members of my staff, Mr. John Gimon of the IHS, and several members of the IHS area office staff attempted to

locate a site that could accommodate both you and your wife, even though we had no obligation to help place your wife and she had none toward us. Such a site was located in the IHS Aberdeen Area. We understand that your wife would have been required to practice some general dentistry, but the opportunity to develop an orthodontics practice was available. You and your wife cancelled your planned site visit to the Aberdeen area and rejected that offer.

We believe that we have been very accommodating to you and your needs. However, our overall mission of providing health professionals to underserved areas and programs must be our priority, and you remain assigned to the IHS. If you do not match to a site prior to April 15, you

will be assigned to a specific site to fulfill your obligation.

If we may be of further assistance, please let us know.

Sincerely yours,

/s/ Kenneth P. Moritsugu, M.D., M.P.H.

Kenneth P. Moritsugu, M.D., M.P.H.

Director

National Health Service Corps

DEPARTMENT OF HEALTH & HUMAN SERVICES

BUREAU OF HEALTH CARE DELIVERY

AND ASSISTANCE

Health Resources and

Services Administration

Rockville MD 20857

April 28, 1986

James J. Ledwith, M.D.

2630 Latonia Boulevard

Toledo, Ohio 43606

Dear Dr. Ledwith:

We understand that you did not match to an Indian Health Service (IHS) site during phase II of the placement cycle. Furthermore, you informed Mr. John Gimon that you do not expect to fulfill your scholarship commitment with the National Health Service Corps through a position in the IHS. Therefore, we are recommending

that you be placed in default of your scholarship obligation effective July 1. You will be notified shortly about the terms of your financial repayment.

Sincerely yours,

/s/ Kenneth P. Moritsugu, M.D., M.P.H.

Kenneth P. Moritsugu, M.D., M.P.H.

Director

National Health Service Corps

James J. Ledwith Jr., M.D.
2630 Latonia Boulevard
Toledo, Ohio 43606

May 23, 1986

Kenneth Moritsugu, M.D.
Director, NHSC
Department of Health and Human Services
Parklawn Building
5600 Fishers Lane
Rockville, Maryland 20857

Dear Dr. Moritsugu:

I am in receipt of your letter of April 28 which states that you are recommending that I be placed in default of my scholarship commitment. Although the last several months have prepared me to be unsurprised by a lack of cooperation, this premature act leaves me stunned. The

basis of this decision appears to be in several distorted facts and false allegations. In the final analysis it appears to be an inappropriate sequela of your unwillingness to assist me in locating an appropriate service opportunity. The gravest implication of this action lies in its prematurity. April 15 was established as a deadline by the NHSC as the end of only one phase of the placement process. Since that time we were supposed to enter a process of specific site assignment. You have bypassed this phase and demonstrated your refusal to assist in an appropriate site assignment. Members of your staff, Debra Parham and Dr. Jacobs, both told me in telephone converstions during the past several months that the final site assignment phase after April 15 would not

be limited to any one program, state, or region but that all available sites would be considered. I have received no communication from the National Health Service Corps since the start of this phase except your letter informing me that I would be specifically site assigned and your subsequent letter placing me in default.

I suspect that you may try to defend your action through your letter of April 14 stating that I remain assigned to the IHS and my statement to Mr. Gimon of the IHS on April 13 that "As I see no further progress this matter I must inform you that I do not expect to be able to fulfill my scholarship commitment with the NHSC through a position in the Indian Health Service". You will note that the above

quote from my letter to Mr. Gimon differs from the allegation in your notice of default. Also, this statement, though still true today under the existing circumstances, was made well before I received your letter dated April 14. I naively expected that the NHSC would change its inappropriate assignemnt and I attempted to prepare Mr. Gimon for this. Our communications have made it clear to both of us that no appropriate position exists within the IHS. I am hopeful that you will not pretend that the NHSC has never changed the program or site assignment of an obligee in the past. Despite the lace of assistance prior to April 15, I did expect more attention to the matter of selecting an appropriate service location for me during this final placement phase.

Your letter of April 14 deserves further comment at this time. You reiterated the NHSC placement policy stating "that obligors who did not match to a site prior to April 15 would be assigned to a specific site to fulfill their obligations." This is what I expected. Instead, I was placed in default.

You stated that sites in King William and King and Queen Counties in Virginia were not considered to be of sufficiently high priority to warrent inclusion on the 1986 HPOL. Despite my specific request in a previous letter you failed to justify this decision, especially in light of the fact that you breach the priority designations published in the Federal Register. Of course, there is strong evidence to the contrary, that this area was indeed felt

to be of sufficient priority to be placed on the 1986 HPOL. King William County was actually on the 1986 HPOL initially published in July, 1985. It was subsequently withdrawn from the list because of changes in the administrative structure of the facilities there and at Dawn, Virginia, not becaues of any real or perceived changes in the need for services. This was confirmed through my conversations with the Virginia coordinator for placement assistance who expressed shock that it was removed at all, as well as by the administrator of Virginia Primary Care, the organization giving logistic and "networking" assistance to Virginia's community medical centers, and the regional NHSC staff in Philadelphia, all of whom expected that this site would return to the HPOL

shortly. King william County was on the HPOL, it was removed "temporarily" for administrative reasons and not service priority reasons, and except for a slowly growing population its health care needs and available services have not changed in the interim.

You again described the process which led to my assignment to the IHS. With the exception of the fact that you neglected my specific placement needs, the process seems reasonable. However, even very sound principles can occasionally lead to incorrect conclusions, and at that point one must be prepared for flexibility and change. Forcing the process as you have done has only led to further, grave error.

Your scenario of th search for a site within the IHS is in error. Your staff refused to give me assistance when I called on December 31, 1985 after I received the IHS assignment. They dropped the matter into the hands of the IHS. Mr. Gimon, my contact in the IHS, offered no assistance in locating a site with orthodontic needs and would only address the medical needs of the IHS sites. After several calls to IHS headquarters I obtained a reference to Dr. Gary Gritzbaugh from a telephone receptionist. He is the coordinator for IHS dental specialty assignments nationwide and he informed me of the lack of orthodontic positions in the IHS. This is of great consequence as the regional and state dental license system would prevent my wife from practicing in the area of any of

these IHS sites without being federally employed. I informed you of this on January 3, 1986 and have subsequently updated the NHSC of the lack of progress on a regular basis. In addition to Dr. Gritzbaugh, I communicated with several individual IHS sites without progress. On February 5, Dr. Joe Jacobs finally responded to my calls and lettersand informed me that there was no indication that the NHSC staff had thus far made any attempt to resolve the situation. He did subsequently contact a worker in the Aberdeen Area of the IHS which led to my further discussionwith the staff of the Pine Ridge Reservation and the Aberdeen Area.

For four weeks I was led to believe that an orthodontic position was being

considered at Pine Ridge. A great deal of energy was expended by me in an effort to gather information on the reservation, the medical environment, and the orthodontic position. Everything was satisfactory but the description of the orthodontic position remained vague. With assurances from Mr. Bruce Renville and Dr. Norman Clark of the Aberdeen Area I proceeded to arrange an interview and began discussions over the phone with the local personnel, including Dr. Don Smith, the dental clinic head. It was at that time that I suspected that no one had any intention of offering an orthodontic position to my wife. After four days of phone calls to clarify the matter I cancelled the site visit on March 10, two days before the scheduled date.

The interview was cancelled due to tremendously conflicting descriptions of the dental position being considered. No position was ever offered to me or my wife and your allegation to that effect is false. I left open the possibility of a future site visit if the positions to be considered would be defined in writing. I have to this date received no further information from Pine Ridge, the Aberdeen Area, or the IHS headquarters in regard to this matter or any other positions where an orthodontist is needed.

In further clarification of the matter, your description of the prposed position in South Dakota is a gross distortion of the truth. The position finally described by Dr. Smith and reluctantly admitted to by Dr. Clark, his regional supervisor, was

that of a general dentist. It would involve strictly general dentistry including the limited "interceptive" orthodontics practiced by general dentists with no advanced training, and it would exclude comprehensive orthodontic treatment to which my wife has devoted the past three years of training and practice. Furthermore, her "orthodontic" caseload would be limited to 10% of her practice time. This would be inadequate to maintain her skills and would require her to perform general dentistry for which her skills and her knowledge base have diminished with time.

The NHSC has failed to give me any assistance other than misinformation in locating an appropriate practice location within its arbitrary list of placement

sites. The NHSC has breached its original agreement with me to consider my wife's employment needs in the assignment process. The NHSC has subsequently seriously breached its established assignment process. It has prematurely placed me in default without cause in the middle of the assignment process. It is clear that there is no intention to provide any assistance in locating a placement site at this time.

Less than two months remain until the end of my training. I have no choice but to consider a practice opportunity not on the HPOL, although this may deprive me of the support in establishing my practice that I would have expected from the NHSC.

I will seek legal counsel and after such consultation I will inform you of how you may best rectify this breach of due process and breach of contract. I will remain open to consideration of an appropriate assignment by the NHSC until I establish another practice agreement. I will expect compensation if the continued delay in making an appropriate NHSC assignment prevents my wife or I from being able to practice gainfully by August 4, 1986.

Respectfully,

/s/ James J. Ledwith Jr., M.D.

James J. Ledwith Jr., M.D.

James J. Ledwith Jr., M.D.
2630 Latonia Blvd.
Toledo, OH 43606

June 19, 1986

Acting Director
Division of Health Service Scholarships
Parklawn Building, Room 7-16
5600 Fishers Lane
Rockville, MD 20857

Sir:

I have been notified that the Division of Health Service Scholarships has placed me in default ofthe conditions of my award. As I strongly stated in my recent letter to Dr. Moritsugu, this decision is unfounded and was taken without providing me the opportunity to consider an appropriate practice site to fulfill my obligation. The NHSC has denied me due

process by not allowing me to participate in the third phase of the established matching process and by taking this default action without grounds and without providing me an opportunity to respond. In addition, the NHSC has provided no meaningful assistance in locating an appropriate practice site.

I cannot accept this default determination as I have never expressed an unwillingness to fulfill my obligation. Since the the unsuccessful end of the first phase of matching I have been denied information on appropriate available opportunities. I have never been offered a site assignment. It has been these restrictions from the NHSC which have prevented me from making a specific site commitment.

Because I have no other recourse at this time, I am evaluating practice opportunities in designated HMSA's. I expect to at least fulfill the spirit of the commitment that I made six years ago, even if the NHSC refuses to allow me to do this within their program.

As the default decision is in dispute I cannot consider any request for financial payments at this time. If the NHSC does indeed prefer that I not serve my obligated time, I will consider alternative arrangements.

Sincerely,

/s/ James J. Ledwith Jr., M.D.

James J. Ledwith Jr., M.D.

AYLETT FAMILY MEDICAL CENTER

P.O. Box 124

Aylett, VA 23009

(804) 769-3096 (804) 746-1677

Augustine W. Lewis, M.D.

James J. Ledwith, Jr., M.D.

December 15, 1986

National Health Service Corps

David W. Callagy

Acting Director

Division of Health Service Scholarships

Parklawn Building, Room 7-16

5600 Fisher's Lane

Rockville, Maryland 20857

Dear Mr. Callagy:

I received your letter of July 14th along with a forbearance agreement form. This form was not completed because I could not get a response to my telephone inquires.

I might also state that I had to be quite suspicious of your motivations when I received a letter from an Indian Reservation in the state of Minnesota within a couple of days of receiving the forbearance agreement. I have tried to stress to you and the National Health Service Corps as a whole that I cannot serve my obligation in a part of the country where my wife is unable to obtain dental licensesure. As I have informed the corps in the past, I have relocated to the state of Virginia where I am serving in a designated health manpower shortage area.

I believe there was some disbelief that my wife and I would choose to serve in such an underserved area along with disbelief that an orthodontist could develop a

thriving practice in such a community. After four months here, I can tell you that this has indeed been possible. I note with incredulity the site that I had repeatedly inquired about in King William County, VA, is recruiting physicians for the 1987 placement cycle. It is very interesting to me that the National Health Service Corps would feel a need to place a physician in this community now that there are two family physicians practicing three miles away whereas a year ago there was only one.

I have been disappointed by the corps' reluctance to assist me in placement and I repeat my willingness to fulfill my obligation to the National Health Service Corps. I simply cannot accept an assignment where my wife cannot use her

seven years of past professional training and experience. I humbly suggest that the ideal option would be for me to remain where I am in this designated HMSA and fulfill my obligation through the Private Practice Option should the floundering

King William Community Health Services close it's doors. I will be glad to explore other options with you as well.

Sincerely,

/s/ James J. Ledwith, Jr., M.D.

James J. Ledwith, Jr., M.D.

JJLjr/drl

AYLETT FAMILY MEDICAL CENTER

P.O. Box 124

Aylett, VA 23009

(804) 769-3096 (804) 746-1677

Augustine W. Lewis, M.D.

James J. Ledwith, Jr., M.D.

April 27, 1987

David W Callagy
Director, Division of Health
Services Scholarships
Bureau of Health Care Delivery
and Assistance
Department of Health and Human Services
Rockville, MD 20857

Dear Mr. Callagy:

I received your letter dated January 9th. I am sure that you and the other National Health Service Corp workers are aware of the inconsistencies and

inadequacies of your site selection and placement procedures. I wish you would take the time and effort to explain the difficulties and work out reasonable solutions for those of us who suffer their consequences.

Enclosed is a completed forbearance agreement. From your review of my file, you are well aware of the limitations in my geographic mobility in regard to site assignment.

I will be available to relocate for service beginning August 10, 1987, or later; however, I could likely assume obligated duties in my local community immediately or even retroactively to August 4, 1986. I am sure that you would find that my current practice exceeds expectations of service to underserved minority and indigent populations.

Sincerely,

/s/ James J. Ledwith, Jr., M.D.

James J. Ledwith, Jr., M.D.

JJL:prc

Enclosure

DEPARTMENT OF HEALTH & HUMAN SERVICES

BUREAU OF HEALTH CARE DELIVERY

AND ASSISTANCE

Health Resources and

Services Administration

Rockville MD 20857

FORBEARANCE AGREEMENT

This document establishes the terms and conditions under which the Bureau of Health Care Delivery and Assistance (hereinafter referred to as the Bureau) will exercise forbearance with respect to the collection of the financial obligation incurred by the undersigned Scholarship Recipient under Public Health Service Scholarship and/or National Health Service Corps Scholarship program contracts.

James J. Ledwith, Jr., M.D., agrees to fulfill his scholarship service obligation as a primary care health professional in a high priority health manpower shortage area to be determined by the NHSC, even though he will not participate in the regular NHSC matching process and other placement policies and practices. Such service must begin on or before six months from the effective date of this agreement or by any other date which has been approved by the Bureau and specified below, and be in accordance with applicable laws, regulations, and policies of the NHSC. The Scholarship Recipient is licensed in the State(s) of VA, OH. His postgraduate training was/will be completed in the specialty of FAMILY PRACTICE and his board status is CERTIFIED.

The Bureau agrees to suspend activities related to the collection of the debt incurred by the Scholarship Recipient for as long as the Scholarship Recipient remains in compliance with the terms and conditions of this Forbearance Agreement. Although no monetary repayment will be required from the Scholarship Recipient during this period of forbearance, interest will continue to accrue. Upon satisfactory completion of the service obligation, the Scholarship Recipient's entire debt will be discharged.

If the Scholarship Recipient should fail to begin or complete the NHSC service obligation described in this Forbearance Agreement, his financial obligation, in an amount determined in accordance with the scholarship agreements/contracts and

applicable law, will become due and owing immediately or upon expiration of the statutory repayment period, whichever is later. Collection activities will be resumed and may include the immediate transfer of the Scholarship Recipient's account to the Department of Justice without further notice.

Date for Start of Service:
To be determined by the NHSC

/s/ James J. Ledwith

_____ 4-15-87

Signature of Obligor Date

/s/ Susan M. Thurston

_____

Notary and Seal for Obligor Signature

My commission expires 12-17-1988

APPROVED DATE

Director, DHSS, BHCDA

Return to:

Default Team, Division of Health Services Scholarships
Parklawn Building, Room 7-16,
5600 Fishers Lane
Rockville, Maryland 20857.
Telephone: 301 443-4364

Please retain a copy of this legal document for your records until an official copy is returned to you.